FULL BENCH

Before S. S. Sandhawalia, C.J., J. M. Tandon and I. S. Tiwana, JJ.

PRITAM SINGH GILL,—*Petitioner.*

versus.

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 3994 of 1977.

January 5, 1982.

Constitution of India—Articles 12 and 226—Punjab Co-operative Societies Act (XXV of 1961)—Section 26—Punjab Co-operative Land Mortgage Banks Act (XXVI of 1957)—Sections 11 and 40—Society registered under the Co-operative Societies Act and in essence an instrumentality of the State—Such Society—Whether amenable to writ jurisdiction—Punjab Co-operative Land Mortgage Bank—Extent of the control of the State Government thereon—Such control—Whether makes the Bank an instrumentality of the State and thus an 'Authority' within the meaning of Article 12—Order of the Managing Director of the Bank compulsorily retiring an official—Whether could be quashed by a writ of certiorari.

Held, that once it is established that a body is an instrumentality and agency or projection of the State, then its mere legal garb, under which it is clothed, namely, whether it is a co-operative society, or a company or a society registered under the Societies Registration Act, ceases to have dominance. In a way the law now pierces the well of mere form to arrive at the kernel of true substance. It has, however, to be highlighted that the various tests may not individually be decisive and their cumulative effect in each particular case has to be taken into account. Consequently if on the basis of those tests the inevitable conclusion is reached that a co-operative society is in essence in instrumentality of the State, then the mere fact that it was registered under the Co-operative Societies Act would in no way render it immune to the writ jurisdiction. Thus, where a society registered under the Co-operative Societies Act is in essence an instrumentality or agency of the State, it would become amendable to the writ jurisdiction under Article 226 of the Constitution in the same manner as the State itself is.

(Paras 13 and 15).

Held, that section 26 of the Punjab Co-operative Societies Act, 1961, generally or sub-section (4) thereof in particular, cannot by themselves in the context of the other factors, be said to vest such a deep and pervasive control of the State on the Mortgage Bank so as to render it as instrumentality of the State whilst conducting ordinary, fiscal / banking and business activities.

The conclusion, therefore, is inevitable that the Mortgage Bank is not an instrumentality or agency of the State and consequently, it cannot be deemed to be an 'Authority' within the meaning of Article 12 of the Constitution of India and thus not amenable to a writ of *certiorari* under Article 226 of the Constitution. (Paras 23 and 25).

T. Gattaia and others v. *The Commissioner of Labour and another* 1981 Lab. I. C. 942 DISSENTED FROM,

Case referred by a Single Judge (Hon'ble Mr. Justice I. S. Tiwana) to a larger Bench on 26th August, 1981 for the decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandawalia, the Hon'ble Mr. Justice J. M. Tandon and the Hon'ble Mr. Justice I. S. Tiwana finally decided the case on 5th January, 1982.

Writ Petition under Article 226 of the Constitution of India praying :—

(1) *That this Hon'ble Court may be pleased to call for the records of this case and after their perusal may be pleased to issue an appropriate writ, Order, or Direction in the nature of* Certiorari *quashing the suspension order dated 10th January, 1975 Annexure P/6 passed by the Registrar Respondent No. 2 and the entire subsequent disciplinary proceedings against the petitioner, the decision dated 12th October, 1977 purported to have been passed by Respondent No 2 retiring the petitioner with retrospective effect with effect from 1st June, 1974 and the relieving order Annexure P/24 passed by Respondent No. 3 ;*

(2) *That respondent No. 3 be directed to treat the petitioner in service and to pay all the arrears of salary, bonus, interest, increments etc. due to him ;*

(3) That any other appropriate Writ, Order or Direction may also be issued which this Hon'ble Court deems fit in the *circumstances of the case ;*

(4) *That pending disposal of the writ petition the operation of the impugned order Annexure P/BD may kindly be stayed ; and*

(5) *That the costs of the petition may also be awarded to the petitioner.*

I. S. Saini, Advocate with Virender Kumar Jhangra Advocate.

J. L. Gupta, Advocate with Rajiv Atma Ram, *for respondent No.* 3.

B. S. Khoji, Advocate and J. C. Batra, Advocate *for respondent No.* 4.

S. P. Soni, Advocate, *for No.* 7.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether a Society registered under the Punjab Co-operative Societies Act, which in essence is an instrumentality or agency of the State, would become amenable to the writ jurisdiction under the provisions of Article 226 of the Constitution of India, is the meaningful question which has necessitated this reference to the Full Bench. Inevitably at issue in this context is the necessary elaboration or qualification of the ratio of the earlier Full Bench case in *Ajmer Singh* v. *Registrar Co-operative Societies, Punjab* (1-A).

2. The facts deserve notice only in so far as they are relevant to the pristine issue aforesaid. The Punjab State Co-operative Land Mortgage Bank Ltd., respondent No. 3, (hereinafter called 'the Mortgage Bank') is an Apex Society, which on the petitioner's own showing is registered under the Punjab Co-operative Societies Act, 1961. Pritam Singh Gill, the writ petitioner, was originally appointed as a Legal Assistant in the Mortgage Bank on 15th March, 1963. It is averred that he was later promoted as Assistant Secretary (Admn.) in the year 1969. He was prematurely retired with effect from 1st June, 1974, from the service of the Mortgage Bank under the orders of its Administrator. He later illegally attempted to join the Bank and ultimately,—vide Annexure P-24, the impugned order of the Managing Director, it was directed that he stands retired from the service of the Mortgage Bank with effect from 1st June, 1974 and was consequently relieved forthwith from his duties.

3. The writ petitioner primarily seeks a writ in the nature of certiorari for quashing the impugned order of retirement Annexure P-24, and it was the common case that the primary relief sought was against the Mortgage Bank, respondent No. 3.

(1-A) A.I.R. 1981 Pb. & Hy. 107.

4. This case first came up before my learned brother I. S. Tiwana, J., sitting singly. Before him on the very threshold a preliminary objection was raised that no writ of certiorari lay against the respondent Mortgage Bank, which was a registered co-operative society and against whom the primary and indeed the only relief was sought to be claimed. Primary reliance for this preliminary objection was placed on the Full Bench judgment of this Court in *Ajmer Singh's case* (supra). However, on behalf of the writ petitioner the firm stand taken was that the respondent Mortgage Bank was in essence an instrumentality or an agency of the State itself, and, therefore, in view of the subsequent decisions of their Lordships in *Som Parkash Rakhi* v. *Union of India* (1), *and Ajay Hasia* v. *Khalid Mujib* (2), a writ of certiorari would lie against the Mortgage Bank despite the fact that it was a registered co-operative society. Noticing that in case the stand of the petitioner, that the Mortgage Bank was in essence an instrumentality of the State, were to be accepted then the view in **Ajmer Singh's case** (supra) might well require some qualification in view of the observations made in the later decisions of the Supreme Court, the learned Single Judge has referred the matter to the Full Bench.

5. Now in view of the reference order, the learned counsel for the parties were in total agreement that at the very threshold the issue which calls for determination is that on the assumption that the Mortgage Bank is an instrumentality of the State, would it, therefore, become amenable to a writ of certiorari despite the admitted fact that it is incorporated under the Punjab Co-operative Societies Act, 1961. It is this aspect to which we must first turn our attention.

6. It is manifest from the above that the issue herein arises in the context of the provisions of the Punjab Co-operative Land Mortgage Banks Act, 1957 (hereinafter called 'the Mortgage Banks Act') read with Punjab Co-operative Societies Act, 1961 (hereinafter called 'the Act'). That being so it is obvious and indeed it was the common stand of the learned counsel for the parties that the matter should be examined primarily in the light of the aforesaid two statutes. The relevant provisions which first call for pointed notice

(1) A.I.R. 1981 S.C. 212.
(2) A.I.R. 1981 S.C. 487.

are those of the defining section 2 of the Mortgage Banks Act, which are in the following terms:—

"2. **Definitions**—In this Act, unless the context otherwise requires:

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) "Mortgage Bank" means a Primary Land Mortgage Bank or State Bank registered or deemed to be registered under the Punjab Co-operative Societies Act, 1954.

(e) * * * * *

(f) "Primary Land Mortgage Bank" means a co-operative Land Mortgage Bank registered or deemed to be registered under the Punjab Co-operative Societies Act, 1954, and affiliated as a member to the State Bank;

(g) "Registrar" means the person appointed by the State Government to be Registrar of Co-operative Societies for the State of Punjab, or any person appointed by the State Government to assist the Registrar, under Section 3 of the Punjab Co-operative Societies Act, 1954;

(h) "The State Bank" means the Punjab State Co-operative Land Mortgage Bank Limited to be established for the purposes of this Act;

(i) * * * * *

(*Now Punjab Co-operative Societies Act, 1961).

7. Now a plain reading of the aforesaid provisions (as also of other Sections of the Mortgage Banks Act) would pointedly show that this statute does not even remotely create any primary Land

Mortgage Bank or a State Co-operative Land Mortgage Bank at all. Indeed it merely provides for their registration or incorporation under the Punjab Co-operative Societies Act, either expressly or by deeming fiction of law. That being so it is the agreed position that the Mortgage Bank hereunder is not a body created by a statute. It is only a society registered under a statute, though this test is now authoritatively held to be no longer decisive, yet undoubtedly it still remains a relevant factor. Plainly enough, therefore, the Mortgage Bank does not come within the ambit of being a statutory authority on the ground of having been expressly created or brought into existence by a specific statute.

8. It next deserves to be highlighted that it was the common case before us and indeed the petitioner's own pointed averments to this effect in paragraph No. 1 of the writ petition are that the Mortgage Bank was duly registered under the Punjab Co-operative Societies Act, 1961. On this factual matrix the core question is that presuming the Mortgage Bank to be an instrumentality or an agency of the State, would it still be immune to a writ of certiorari because of the factum of being a body registered under the Co-operative Societies Act.

9. Now it appears that the aforesaid meaningful question before us is so well covered by the recent decision of the final Court and so exhaustively elaborated thereunder that it seems not only unnecessary but wasteful to launch a dissertation on first principles. It, therefore, suffices to notice how the earlier ratio of the Full Bench in *Ajmer Singh's case* now calls for some elaboration in the light of the subsequent binding precedent of the final Court. Reference to the judgment in *Ajmer Singh's case* would show that therein the pointed question of a body being an instrumentality or the agency of the State was not even remotely raised far from being debated. Consequently the Full Bench considering the virtually unbroken line of precedent within this Court and placing particular reliance on the decision of the final court in *Praga Tools Corporation* v. *C. V. Imanual and others* (3), *Co-operative Central Bank Ltd., and others* v. *Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and*

(3) A.I.R. 1979 S.C. 1306.
(4) A.I.R. 1970 S.C. 245.

others, etc. (4), *Subhajit Tewary* v. *Union of India and others* (5), and *The Nayagarh Co-operative Central Bank Ltd., and another* v. *Narayan Rath and another* (6), had concluded as follows:—

> "In view of the above, affirming the earlier judgments of this Court, we would answer the question posed at the outset in the negative to the effect that a Society merely registered under the Act is not amenable to the writ jurisdiction under Article 226 of the Constitution of India."

10. However, somewhat new dimensions in this context have been elaborately considered by the final Court in *Ramanna Dayaram Shetty* v. *The International Airport Authority of India and others* AIR 1979—*Supreme Court*—1628 (6A). Therein a strenuous objection was pressed on behalf of the respondents that the International Airport Authority of India even though created by the International Authority Act, 1971, was not amenable to the writ jurisdiction because it was a Corporation not within the ambit of Article 12. Repelling this stand on principle Bhagwati, J., speaking for the Court observed as follows:—

> If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations. But the question is how to determine whether a corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty."

AND again after an exhaustive conspectus of the case law it was concluded in these terms:—

> "If a statutory corporation, body or other authority is an instrumentality or agency of Government it would be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

(5) A.I.R. 1975 S.C. 1329.
(6) A.I.R. 1977 S.C. 112.
(6-A) A.I.R. 1979 S.C. 1628.

11. The ratio in the *International Airport Authority's* case has now met with repeated affirmance in subsequent decisions despite some divergence of view with the earlier authorities. In *Som Parkash Rekhi's* case an identical stand was sought to be taken on behalf of the Bharat Petroleum Corporation Ltd., on the ground that it was merely a Government Company registered under the Companies Act and consequently beyond the pale of the writ jurisdiction. Relying expressly on the *International Airport Authority's* case, this stand was rejected out of hand with the following observations:—

> "The following factors have been emphasised in that ruling as telling though not clinching. *These characteristics convert a statutory corporation, a government company, a co-operative society and other registered society or body into a State and they are not confined to statutory corporations alone".*

WITH the ultimate conclusion:—

> "The finale is reached when the comulative effect of all the relevant factors above set out is assessed and once the body is found to be an instrument or agency of Government, the further conclusion emerges that it is 'State' and is subject to the same constitutional limitations as Government.

12. The recent decision constituting the trilogy is that of the Constitution Bench in *Ajay Hasia's* case. Therin also a similar objection was raised that the Society running the College was merely one registered under the J & K Registration of Societies Act, 1898 and was, therefore, not an authority within the meaning of Article 12. Repelling the same, their Lordships authoritatively formulated the tests and concluded:—

> "We may summarise the relevant tests gathered from the decision in the *International Airport Authority's* 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."

(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."

(3) "It may also be a relevant factor .... whether the corporation enjoys monoply status which is the State conferred or State protected."

(4) "Existence of "deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation are of public importance and closely related to the governmental functions, it would be a relevant factor in classifying tion as an instrumentality or agency of Government." the corporation as an instrumentality or agency of Government."

(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 of agency of Government".

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's case be an 'authority' and therefore, 'State' within the meaning of the expression in Article 12."

13. From the aforesaid authoritative enunciation it is now well settled that once it is established that a body is an instrumentality and agency or projection of the State, then its mere legal garb, under which it is clothed, namely, whether it is a cooperative society, or a company or a society registered under the Societies Registration Act, ceases to have dominance. In a way the law now pierces the veil of mere form to arrive at the kernel of true substance. It has, however, to be highlighted that the aforequoted six tests may not individually be decisive and their cumulative effect in each particular case has to be taken into account. Consequently if on the basis of these tests the inevitable conclusion is

reached that a cooperative society is in essence an instrumentality of the State, then the mere fact that it was registered under the Co-operative Societies Act would in no way render it immune to the writ jurisdiction. This inevitably follows from the consistent observations of the final Court in the trilogy of cases wherein a government company, incorporated under the Companies Act, a society registered under the Societies Registration Act and an authority specifically created by a statute have all been deemed to be within the ambit of Article 12, if they were established to be the instrumentality or the agency of the State in essence.

14. Indeed faced with the stone wall of impenetrable and binding precedent Mr. J. L. Gupta, learned counsel for the Mortgage Bank conceded that in view of the decisions of the final Court it has to be inevitably held that the instrumentalities and agencies of the State could no longer be beyond the pale of the writ jurisdiction. However, we are not at all basing ourselves on any concession by the learned counsel, because it seems to be plain on binding precedent that the ratio in *Ajmer Singh's* case has now to be qualified accordingly.

15. To conclude on this aspect we would answer the question posed at the very outset in the affirmative and hold that where a society registered under the Punjab Co-opeartive Societies Act is in essence an instrumentality or agency of the State it would become amendable to the writ jurisdiction under Article 226 of the Constitution of India in the same manner as the State itself is.

16. Though the learned counsel for the petitioner succeeds in his stand on the aforesaid issue, yet this is no more than a pyrrhic victory. This is so because his attempts to establish that the mortgage bank herein is an instrumentality or agency of the State, appears to border on a total futility. Mr. Saini very fairly conceded that in the writ petition not the least factual foundation whatsoever has been laid to show that the functions of the mortgage bank were either governmental in nature *stricto sensu* or so closely analogous thereto that it can be labelled as a projection of the State so as to come within the ambit of what has now become virtually a term of art, namely, an instrumentality or agency of the State.

17. It had to be conceded by the learned counsel for the petitioner that there was no material worth the name which could establish tests Nos. 1, 2, 3, 5 and 6 as authoritatively laid and quoted above in para No. 12 from *'Ajay Hasia's case* (supra). Only a lame attempt was made on behalf of the petitioner to bring his case within test No. 4 on the ground that there appears to be a modeourn of governmental control over the bank's activities. However, what deserves highlighting herein is the fact that it is not any finical kind of State control which is adequate to satisfy the stringent conditions spelled out in test No. 4. It can perhaps be said that with the ever extending activities of the welfare State, there would hardly be a field wherein it may not exercise some modicum of control or interference. However, this is not the kind of control which would convert any and every legal person into a State for the purposes of Article 12 of the Constitution of India. What their Lordships have highlighted is that, firstly, the State control must be both deep and pervasive. Not only that, its depth and pervasiveness must be of a kind as to lead to a clear pointer that the body indeed is either a State agency or an instrumentality thereof. It is, in essence, this kind of control which is authoritatively visualised and it is on this anvil that we have now to judge whether the mortgage bank satisfies even one of the six prescribed tests.

18. It appears to me that the learned counsel for the petitioner was virtually forced to clutch at a straw in adverting to the provisions of sections 11 and 40 of the Mortgage Bank Act for attempting to contend that these were evidence of all pervasive deep control by the State over the Banks. Section 11 merely confers the power on the Board of Directors of the State Bank to make regulations. Indeed, far from showing an all pervasive State control over the Board, this provision in fact confers statutory power on the Board to make regulations. The solitary limitation on this power is that these regulations would ultimately have sanction subject to the approval of the trustees and the State Government. The five clauses of section 11 further circumscribe the area within which these regulations can be made by the Board of Directors of the State Bank. The power to make bye-laws and regulations for effective working is elementary and this ordinary power is invariably conferred on bodies or corporations and consequently nothing

flows from section 11 which in any way can satisfy the test of deep and pervasive control indicative of the corporation being an instrumentality or agency of the State.

19. What has been said with regard to section 11 seems to apply doubly in the context of section 40. Herein again, the section confers a power on the Board to make regulations. In contrast to section 11, this power of the Board to do so is not subject in any way to either the State Government or any one of its agencies. Therefore, section 40 far from indicating any control by the State Government only confers a power on the Board itself for controlling and exercising general supervision over the primary land mortgage banks subject to the obvious limitations that they are not inconsistent with the Mortgage Banks Act or the rules framed thereunder. It seems unnecessary to elaborate the matter and counsel's reliance on Section 40 in this context seems to be hardly well-conceived. Then a last ditch attempt in this context was made by making a reference to section 12 of the Mortgage Banks Act which empowers the Registrar to order recoveries by distraint and sale of the produce of the mortgaged land etc. A larger reading of section 12 is plainly indicative of the fact that it is indeed far removed from in any way showing any deep or pervasive control of the State over the bank. It only indicates an enabling remedy to the bank to apply to the Registrar for the recovery of instalments due to it, by way of distraint and sale of produce of the lands mortgaged with the bank. One fails to see how the providing of remedy for applying to the Registrar for certain relief is indicative of total State control of the authority. Further, sub-section (2) of section 12 merely says that on receipt of such an application by the bank, the Registrar may take such action as necessary to distrain and sell such produce. Registrar's action here again is discretionary and not mandatory. Indeed, the provisions of section 12 only show that the bank is at best a suppliant at the door of the Registrar for seeking an added remedy for the recoveries of either instalments of debts due to it in addition to any other remedy available to it. It seems to be plain that this remedy of applying to the Registrar for distraint or sale of property, which in his discretion he may order or not, cannot even for a moment be labelled as a deep and all pervasive control indicative of the mortgage bank being an instrumentality or agency of the State.

20. Mr. I. S. Saini, the learned counsel for the petitioner, frankly conceded before us that far from relying on any particular part of section 26 of the Punjab Co-operative Societies Act, and making the requisite pleadings therefor, the very reference to this section was altogether missing in the whole of the voluminous writ petition. Nevertheless, as a matter of special consideration, we allowed the learned counsel's prayer to make submissions on the basis of the provision of section 26, if these could *ipso facto* tend to advance his case. However, a close analysis of the relevant provision far from aiding the case of the petitioner, seem to have a contrary effect thereto. Reliance in this context was primarily on sub-sections (2) and (4) and to appreciate the same, it is apt to quote relevant parts of the section :—

"(2) Notwithstanding anything contained in sub-section (1) :—

(a) where the Government have subscribed to the share capital of a co-operative society or has guaranteed the repayment of the principal of and payment of interest on debentures issued for loans raised by a co-operative society, the *Government or any person authorised by it in this behalf shall have the right to nominate on the committee such number of persons, not exceeding three or one-third of the total number of members thereof, whichever is less, as the Government may determine* :

Provided that where the Government have subscribed to the share capital of a co-operative society to the extent of twenty lacs of rupees or more, the Government may, notwithstanding anything contained in the bye-laws of the society,—

(a) appoint one of the members nominated in the aforesaid manner as Chairman of the Committee of such society; or

(b) nominate another member in addition to those nominated in the aforesaid manner and appoint him as Managing Director ;

Provided further that no person shall be appointed to act as Managing Director unless he is a member of the

Indian Administrative Service, Punjab Civil Service (Executive Branch) or a Deputy Registrar, a Joint Registrar or an Additional Registrar, Co-operative Societies.

(b) where the Industrial Finance Corporation, the State Finance Corporation or any other financing institution notified in this behalf by the Government has provided finance to a co-operative society, the Industrial Finance Corporation, State Finance Corporation or other financing institution as the case may be, shall have the right to nominate one person on the committee."

* * *

* 1 *

(4) Where, in a co-operative society in which shares have been subscribed for liability by way of guarantee for borrowing exceeding fifty percentum of the working capital of the society has been undertaken by the Government, *a difference of opinion in respect of any matter arises between the nominated members of the committee and other members thereof, the matter shall be referred by the committee to the Government whose decision thereon shall be final* and will operate as if the same were a decision taken by a committee."

Now it was the admitted position at the bar that the Board of Directors of the State Bank consisted of as many as 18 Directors. In view of section 26(1) of the Act, it is mandatory that these would be elected in the manner prescribed and further have to be shareholders. Moreover, sub-section (2) gives only a limited power to the government to nominate at the highest, three members to the Board, on the express condition where the government have subscribed to the share capital of a Co-operative Society or has guaranteed the repayment of the principal and the payment of interest on debentures issued for loans raised by a Co-operative

Society. Now it would be plain that if the condition of subscription to share capital or guarantee for payment is not satisfied, the State government has not the least right to add to the elected members of the Board. Assuming, however, that in the case of a Mortgage Bank, the government does subscribe to the share capital or guarantee the repayment of the principal or the interest of the debentures, then at the highest it can nominate three persons only to the Board. Can it possibly be said that the discretionary right of naming three persons on a Board of 18, gives an all pervasive total control to the State? The answer has to be in a categoric negative. Plainly, the nominees of the government even where it does choose to nominate would be far out-numbered by the elected members. To label this limited right of nomination, as indicative of the Mortgage Bank, being an instrumentality of the State, by itself, appears to me as a totally farcical.

21. Reference was then made to the proviso to sub-section 2(a) and its sub-clauses which, under specific conditions enables the government to appoint one of the nominated members as a Chairman and the Managing Director of the Society. Herein again what observes highlighting is that these provision come into play only if the pre-eminent conditions is satisfied that the government's contribution to the share capital is to the extent of twenty lacs of rupees or more. In the case before us, there is indeed no averment whosoever to this effect. It would follow, therefore, that even in cases where the government's subscription to the share capital is to the tune of Rs. ninteen lacs, it has no over-riding power of nominating a Chairman or the Managing Director. Assuming, however, that the contribution to the share capital does exceed the prescribed limit, can it be said that the mere discretionary or enabling power to appoint a Chairman or a Managing Director, out of the three nominated members, would necessarily turn the Mortgage Bank into an instrumentality of the State. I do not think so. As at present advised, no exceptional or total controlling power is spelled out in the Chairman or the Managing Director of the Mortgage Bank. The Chairman of the Board again would only be one of the 18 other Directors of the Bank, the vast majority of whom are elected members and in no way subservient to the State. It deserves highlighting that invariably the ultimate control of the Mortgage Bank vests in its Board of Directors. As long as the vast

majority of the Board continues to be those of elected persons, far out-numbering, three nominated members, (if at all so done) it cannot even remotely be argued that the Mortgage Bank or its Board becomes an instrumentality or the projection of the State. Nor can one hold that in specified conditions, the power to appoint one nominated member as Managing Director in case of contribution to share capital to the tune of rupees twenty lacs, would be tantamount to total State Control. The Managing Director, in the ultimate analysis, directs the day-to-day working of the Board. The ultimate control of the Mortgage Bank, as has already been highlighted, vests in the Board of Directors in which the majority would always be of persons elected in the manner prescribed. Further, the discretion to appoint the Managing Director—is not absolute and the purpose seems to be no more that in cases where the governmental aid by way of finance is above twenty lacs, than to safeguard its financial interest, the management should be with a qualified expert who is a member of either the Indian Administrative Service or Punjab Civil Service or a high official of the Co-operative Department.

22. Lastly, in this context, reference may be made to sub-section (4) of Section 26 of the Act. Herein again, the pre-condition for its inter-play is only where in a Co-operative Society in which shares have been subscribed for liability by way of guarantee for borrowing exceeding fifty **per cent** of the capital of the society, which has been undertaken by the government itself. Unless this condition is satisfied, the rest of the provisions of sub-section (4) would not be attracted. However, even here all that is prescribed is that in such a society, if there is a difference of opinion, in respect of any matters arising between the nominated members of the Committee and the other members thereof, the matter shall be referred to the government. It bears repetition that the three nominated members invariably are in a minority, vis-a-vis; the elected members of the Board. In the peculiar situation of sub-section (4), the added safeguard which is provided is that where in a particular case all the three nominated members differ on a specific matter from the others, then the same would not be resolved by majority, but would become the subject-matter of reference to the government for its decision. It is not in each and every matter that the nominated members must be presumed to differ from the elected

ones. Sub-section (4), therefore, prescribes merely for an exceptional situation. Even here it does not lay down that in such a situation, the view of the three nominated members even though in a patent minority would override those of the elected ones. In the event of a difference of opinion between the elected members on one side and the three nominated members collectively on the other, the matter is merely passed on to the government for decision. By judicial precedent, it is now well settled that the government in such a situation does not and cannot act arbitrarily like private individuals and in such a reference, would be bound to decide the issue on merits after considering the view points of the elected members and those who are nominated. It is not that the view of the nominated members must inevitably prevail and the balance is evenly held by the government on merits to decide the issue of difference in favour of either the elected members or those of the nominated members. There can be no warrant for the assumption that in such a situation the nominated members can impose their will on the remaining members of the Board. Therefore, a mere method or device for resolving a difference of opinion where the nominated members are unanimous against those who are elected, cannot be held as indicative of total and all pervasive control. It is significant that under sub-section (4), the three nominated members even when differing with the elected ones do not have a veto power to block the issue. At the highest it necessitates a reference to the government for final decision. Learned council for the respondent was on plausible ground in contending that even vesting a veto power in a person or a body, does not necessarily mean that thereby a total or all pervasive control of the same is passed over to him. A rather well-known example was highlighted that in the United Nations, the big five powers are clothed with a power of veto in a particular situation, but that does not mean that each of these powers exercising the veto, has deep and all pervasive control of the World organisation. What indeed calls for notice here in the larger perspective is that under these provisions, it would seem that even where the government's financial contribution to the institution may be either total or nearly 100 *per cent*, still the right to nominate members to the Board under section (2) of Section 26 of the Act is limited to three or 1/3rd of the total number of the members of the Board whichever is less. It would thus appear that the majority of the controlling body of the authority, namely; the Board of Directors consists of

non-governmental personnel. It is not, therefore, easy to label such a body as either an instrumentality of the government or an agency or projection of the State.

23. To conclude on this aspect, I am unable to hold that Section 26 of the Act generally or sub-section (4) thereof, in particular, by themselves can in the context of the other factors, noticed earlier, be said to vest such a deep and all pervasive control of the State on tht Mortgage Bank so as to render it as an instrumentality of the State whilst conducting ordinary, fiscal, banking and business activities.

24. Particular reference in this context must also be made to *Satish Kumar* v. *Punjab State Co-operative Bank Limited, Chandigah, and others*, (7). Therein an identical stand was sought to be taken on behalf of the petitioner that the Punjab State Co-operative Bank Ltd. (which admittedly was a society registered under the Co-operative Societies Act), was an instrumentality or agency of the State and, therefore, amenable to the writ jurisdiction. My learned brother Tandon, J. in a judgment of remarkable precipicacity tested that claim on the anvil of the six tests enunciated in *Ajay Hasia's case* (supra), and concluded as follows :—

> "In view of discussion above, I hold that the Bank (Ludhiana Central Co-operative Bank) is not an instrumentality or agency of the State nor is it its projection. It is, therefore, not an authority within the meaning of Art. 12 of the Constitution, amenable to writ jurisdiction under Article 226 of the Constitution."

What has been said in the aforesaid *Satish Kumar's case applies* with equal, if not with greater, force in the present case. It would consequently be prolix to restate all that was said therein. It suffices to hightlight that it was rightly ponited out therein that none of the six tests spelled out in *Ajay Hasia's case* (supra) are either conclusive or clinching and it is the cumulative effect of all those tests which is decisive. As has already been noticed herein, not even a single test so prescribed, stands conclusively satisfied in the present

(7) AIR 1981 Pb. & Haryana 282.

case. To avoid wasteful repetition, it more than amply suffices that we agree entirely with the line of reasoning in *Satish Kumar's case* (supra), which is unhesitatingly affirmed.

25. From the above, the conclusion, therefore, is inevitable that it has not even remoely been established that respondent No. 3—the Mortgage Bank (against which alone the primary relief is claimed), is an instrumentality or agency of the State. Consequently, it cannot be deemed to be an authority within the meaning of Article 12 of the Constitution of India and thus not amendable to writ of *certiorari* under Article 226 of the Constitution of India, which is the primary relief sought.

26. Repelled on his primary plank to establish that the Mortgage Bank was an instrumentality of the State and consequently amenable to the writ jurisdiction (despite the fact of its being registered under the Co-operative Societies Act), Mr. Saini made a tactical retreat to make a flanking attack which seems to be equally futile. It was forcefully contended that in spite of the fact that the Mortgage Bank may not be an authority under Article 12 of the Constitution of India, a writ of *certiorari* will nevertheless still lie for quashing the order of the Managing Director of the respondent-Mortgage Bank, whereby the petitioner has been compulsorily retired. This contention might merit some dubious tribute to the ingenuity of the learned counsel but the same is patently fallacious.

27. Reliance for the radical proposition was first placed by Mr. Saini on certain passing observations of the Division Bench of the Madras High Court in *The General Manager, United India Fire & General Insurance Co. Ltd. and others* v. *A. A. Nathan and another*, (8). Therein the pointed question was whether the United India Fire & General Insurance Co. Ltd. was amenable to the writ jurisdiction, particularly in the context of the General Insurance Business (Nationalisation) Act, (57 of 1972). The Division Bench tested the question on the anvil of the tests spelled out in the *International Air Port Authority of India's case* (*supra*) and concluded as follows :—

> ".... Having regard to three special features, we have no hesitation whatsoever in coming to the conclusion that the appellant company will come within the scope of the

(8) 1981 Lah. I.C. 1076.

expression 'other authorities' occurring in Art. 12 of the Constitution. In the first place, under Section 24 of the Act, a right and exclusive privilege to carry on the general insurance business in India is conferred only on the four companies, it is such a right that has been conferred and protected by the statute. Secondly under S. 31 of the Act every officer or other employee of the Corporation as well as of the acquiring company shall be deemed to be a public servant for the purpose of Chap. IX, Indian Penal Code. Thirdly, under S. 32 an indemnity is provided by the Central Government and the Corporation and the acquiring company in respect of the discharge of duties by the officers and other employees of the Corporation or acquiring company. It is pertinent to note that under S. 32, for the purpose of the indemnity, every officer or other employee of the company is treated on a par with the officers of the Central Government. These three circumstances cumulatively, in our opinion, in addition to the other provisions contained in the statute, will clearly establish that the appellant company will come within the scope of 'other authorities', occurring in Article 12 of the Constitution, as has been explained by the several decisions of the Supreme Court."

It is obvious from the above that the Division Bench clearly concluded that the United India Fire & General Insurance Co. Ltd. therein was plainly within the ambit of Article 12 of the Constitution and therefore, amenable to the writ jurisdiction. This judgment, therefore, is plainly distinguishable and of no aid to the petitioner.

28. However, particular and pointed reliance of the learned counsel for the petitioner, in this context, is on the observations of the learned Single Judge of the Andhra Pradesh High Court reported in *T. Gattaia and others* v. *The Commissioner of Labour and another*, (9). Therein, the issue was raised in the context of the lay off and retrenchment of 87 workmen of I.D.L. Chemicals Ltd., Hyderabad. An objection was raised therein that the said I.D.L. Chemicals Ltd. being a company registered under the Companies

(9) 1981 Lab. I.C. 942.

Act, was not amenable to the writ jurisdiction. Rejecting the aforesaid objection, the learned Single Judge, however, held in favour of the petitioner and granted a writ of *mandamus* against the respondent-Company, namely, M/s. I.D.L. Chemicals Ltd. There is no gainsaying the fact that the ratio of the said decision, and in particular some wide-ranging observations made therein, would lend a handle to the submission now sought to be made on behalf of the petitioner.

29. However, with the greatest deference to the learned Single Judge, in the afore-mentioned *T. Gattaiah and others' case*, I am wholly unable to subscribe to that line of reasoning and feel compelled to record the strongest dissent therefrom. Because of the larger ramifications regarding the very nature and scope of a writ of *certiorari* under Article 226 of the Constitution involved, if becomes necessary to extend the compliment of a rational refutation to each one of the premises underlying the said judgment. iWith the greatest respect, it appears to me that certain observations made in the said judgment seem to be destructive of the very theory of precedent on which our judicial system rests, because they patently run counter to the main stream of the authoritative precedent of the final Court itself and curiously enough to the larger benches of the Andhra Pradesh High Court and equally to innumberable Division Benches and Full Bench judgments of this Court and other High Courts. Indeed the learned Single Judge, even after expressly noticing the directly contrary view in the matter *Re: Naqabhushan Reddy*, (10), *Naraisimhan* v. *Chicacole Co-operative Central Bank Ltd.* (11) (A Division Bench judgment of the Andhra Pradesh High Court itself); *Re: V. S. Harrharan*, (12); *M. Durgaiah* v. *Agent, Tandur Collieries*, (13) *and R. Lakshmi* v. *Neyveli Lingnite Corporation*, (14), further observed as follows :—

> "These cases and others of the Punjab and Calcutta, Jammu and Kashmir High Courts which have been referred to by the learned counsel for the respondent-company, do

(10) AIR 1951 Madras 249.
(11) (1959) 1 Lah. L.J. 554.
(12) AIR 1960 A.P. 518.
(13) AIR 1961 A.P. 400.
(14) AIR 1966 Madras 299.

undoubtedly furnish abundant authority for the argument of the respondent-company that no writ would lie against it which was incorporated under the Companies Act. If I were to follow these judgments, I should have rejected this writ petition on the ground that it was not maintainable. But, I regret to say that both on principle and on present authority of our Supreme Court and the English Courts, I am unable to follow these judgments."

30. It would be unnecessary to advert to the innumerable precedents of the final Court now settling authoritatively that a Single Judge of the High Court is bound by the larger Benches of its own Court and cannot even differ from a Single Bench of its own Court and in the latter eventuality the only course open is to refer the matter to a larger Bench. It suffices in this context to refer to the categoric observations in *Jai Kaur and others* v. *Sher Singh and others*, (15), as under :—

"... It is true that they did not say in so many words that these cases were wrongly decided; but when a Full Bench decided a question in a particular way every previous decision which had answered the same question in a different way cannot but be held to have been wrongly decided. We had recently occasion to disapprove of the action of a Division Bench in another High Court in taking it upon themselves to hold that a contrary decision of another Division Bench on a question of law was erroneous and stressed the importance of the well-recognised judicial practice that when a Division Bench differs from the decision of a previous decision of another Division Bench the matter should be referred to a larger Bench for final decision. If, as we pointed out there, consideration of judicial decorum and legal propriety require that Division Benches should not themselves pronounce decisions of other Division Benches to be wrong, such considerations

(15) AIR 1960 S.C. 1118.

should stand even more firmly in the way of Division Benches disagreeing with a previous decision of the Full Bench of the same Court."

Contrary to the above rule, the learned Single Judge in *T. Gattaiah and others' case* (supra) chose to plough a lonely furrow against obviously binding precedents of his own High Court on his own tenuous dictum that all earlier judgments were either contrary to principle or the present judgments of the Supreme Court and the English Courts. With the greatest respect, I am unable to see therein any violation of settled principles or any conflict of authority either with the final Court or with the English Courts.

31. I proceed now to analyse what with great humility, appear to me as the basic fallacies in *T. Gattaiah and others' case.* At the very threshold it may be recalled that the learned Single Judge himself pointedly noticed as follows :—

"It must be particularly noted that what we are concerned in this case is with the issuance of a writ of *mandamus* "A writ of *mandamus* is always held to be available even against corporate bodies and companies".....".

Thus even though the issue was narrowly confined in the context of a writ of *mandamus,* the learned Single Judge made wide ranging observations about a writ of *certiorari.* It is settlled beyond doubt that the scope and nature of the writs of *mandamus* and *certiorari* are very far from being identical. Inevitably, therefore, the observations in *T. Gattaiah and others' case* (supra) made with regard to the nature of the writ of *certiorari* are clearly *obiter dicta* when the sole issue before the Court was the issuance or otherwise of a writ of *mandamus* alone.

32. Now apart from the above, the basic premise, which seems to underlie the view of the learned Single Judge in *T. Gattaiah and others' case, that* even a writ of *certiorari* would lie against a private person, seems to be the rather wide language in which Article 226 of the Constitution is couched. Because this Article uses the words "any person", it was sought to be assumed that every and any writ could issue against a private person as well thereunder.

Specifically, it was observed as follows :—

> ".....The very wide and special language of Article 226 of the Constitution occurring as it does in a primordial document like the Constitution must, in my opinion, be given its full meaning. In doing so, we must take note of the fact that the Constitution itself declares that the General Clauses Act would apply to its interpretation. According to the General Clauses Act, the word 'person' refers not only to a natural person but even to a legal person, if so done, there is no doubt, in my opinion, that a writ under Art. 226 of the Constitution would be available not only against an authority or Government, but also against a private person....."

33. That the aforesaid stand is patently erroneous, is now so well settled that it would be wasteful to examine this issue on principle. It seems at the dawn of the promulgation of the Constitution an argument of this nature based on the overly literal construction of Article 226 of the Constitution was sought to be raised but was scotched at its very inception by authoritative precedent, which has not been departed from. Reference in this connection may be made to *Re : Gadea Nagabhushana Reddi and another*, (16); *Carlsbad Mineral Water Mfg. Co. Ltd.* v. *H. M. Jagtiani*, (17) *Indian Tobacco Corporation and others* v. *The State of Madras*, (18); *National Traders* v. *Hindustan Soap Works*, (19) *re: V. S. Hariharan*, (12) (supra), *S. P. Manocha and another* v. *The State of Madhya Pradesh and others*, (20); and *Sudarshan Kumar Kalra and others* v. *Union of India and others*, (21). Perhaps it would suffice to quote what is now a living authority which after a conspectus of all the precedent on the point has concluded as follows in the Constitutional Law of India by H. M. Seervai (Vol. II) at page 816:—

> "As a result of the authorities already cited, it may be taken as settled that the principles governing the issue of

(16) A.I.R. (38) 1951 Madras 249.
(17) A.I.R. (39) 1952 Calcutta 315.
(18) A.I.R. 1954 Madras 549.
(19) A.I.R. 1959 Madras.
(20) A.I.R. 1973 M.P. 84.
(21) A.I.R. 1974 Delhi 119

writs of *habeas corpus, mandamus, prohibition, certiorari* and *quo warranto* have not been affected merely by reason of the wide language used in Art 226."

34. What next calls for particular notice is the fact that the insidious fallacy, which seems to have crept in *T. Gattaiah and other's case,* arises from treating the writs in the nature of *habeas corpus, prohibition, quo warranto* and *certiorari,* as being all at par or identical. With great humility, if one may say so, the confusion in the judgment is arising from the assumption that the writ of *certiorari* is identical in scope, its nature, and to whom it can issue, with the wide variety of other writs. It is settled beyond doubt that the long and ancient history of the specific writs in English law makes meaningful and significant distinctions betwixt the scope and nature of the different writs and to whom and when they should be lawfully issued. To treat all the different and wide varieties of writs as if they were identical or synonyms is, therefore, basically fallacious. This is evident from the fact that it was not seriously contested before us at the bar that a writ of *habeas corpus* might well lie against a private person masquerading in the garb of some authority and illegally depriving the citizen of his liberty. Similarly, a writ of *quo warranto* would also issue against a private person who is a mere pretender to a public office. Again it has been authoritatively settled by their Lordships of the Supreme Court that a *madamus* may also issue to a private person provided that the basic pre-conditions of there being a public duty imposed upon him is satisfied equally along with the clear legal right in the petitioner to claim the relief. From this, it does not follow and indeed it would be fallacious to presume that the writ of *certiorari* would, therefore, be invariably available against every and any private person. It was apparently under a misconception stemming from treating all the varied writs as identical that the learned Single Judge in *T. Gattaiah and others' case* (supra) attempted to rely on Articles 17, 18, 23 and 24 of the Constitution. These provide for the abolition of untouchability, abolition of titles, prohibition of traffic in human beings and forced labour, and to prohition in employment of children in factories etc. It is not quite easy to see how a writ of *certiorari* is avilable in the context of some of the aforesaid Articles of the Constitution. With the greatest respect, it would appear that some of these provisions have indeed little or no relevance to the nature, the scope, to whom

it can be directed and the basic requirements for the issuance of a writ of *certiorari*.

35. Again a close reading of *T. Gattaiah and others case* would show that the basic premise underlying the view of the learned Single Judge seems to be that the classic exposition of Lord Justice Atkin in *Rex* v. *Electricity Commissioners*, (22) with regard to the nature of the writs of prohibition and *certiorari* stands virtually overruled and no longer holds the field. With respect, this assumption is wholly untenable though it is undeniable that during the passage of 60 years since that judgment was rendered some development of law in that field has inevitably taken place. The hallowed dictum was spelt out in the following terms by Lord Justice Atkin:—

> "....The matter comes before us upon rules for writs of prohibition and certiorari which have been discharged by the Divisional Court. Both writs are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; certiorari requires the record or the order of the court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of Justice. *Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs....*"

(22) 1924(1) King's Bench 171.

There is no gainsaying the fact that the aforesaid statement of Lord Justice Atkin is not exhaustive. But it is a far cry therefrom to say that the same has no longer any relevance. Indeed, nearly 30 years later it was re-affirmed by Lord Goddard, C.J. in *Regina* v. *National Joint Council for the Craft of Dental Technicians (Disputes Committee) and others,* (23). Therein a writ of *certiorari* or prohibition was sought against the Disputes Committee of the National Joint Council for the Craft of Dental Technicians Unreservedly declining to issue such a writ Lord Goddard, C.J., observed as follows:—

> "....Certiorari lies to bring up the decision or record of the inferior court to this court with a view to it being quashed. It is granted and directed to one of the inferior courts, such as magistrates' courts and county courts, and it has been extended to the various bodies which have been entrusted by Parliament with duties partly of an administrative character and partly of a judicial character in some cases, but cases in which subjects may be affected by their decisions. There is no instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator and statutory arbitrator is a person to whom by statute the parties must resort."

The learned Single Judge in *T. Gattaiah and others' case* has raised veiled doubts that the aforesaid two judgments have ceased to be relevant because of the observations in *Regina* v. *Criminal Injuries Compensation Board, Ex-parte Lain* (24) and *Ridge* v. *Baldwin and others,* (25).

36. With respect, the inference sought to be made from *Lain's case* (supra) in this context again do not seem to be tenable. In *Lain's case* (supra) a writ of *certiorari* was sought against Criminal Injuries Compensation Board. Lord Parker, C.J., noticed that

(23) 1953 1 Q.B. 704.
(24) (1967) 2 Q.B. 864.
(25) (1963) 2 All E.R. 66.

the Board clearly performed public duties and delineated its functions in the following terms:—

> "Moreover, it is quite clearly under a duty to act judicially and indeed no argument to the contrary has been presented. It is to consist of a chairman of wide legal experience and five other members who are legally qualified (see paragraph 1 of the scheme). It is charged with assessing compensation on the basis of common law damages save as varied by the scheme (see paragraphs 9—13). Its procedure involves the examination and cross-examination of witnesses and it is provided that the burden is on the applicant to make out his case and that the decision shall be arrived at solely in the light of the evidence brought out at the hearing (paragraph 18)."

On the aforesaid assumption it was held that the Criminal Injuries Compensation Board was amendable to the writ jurisdiction. I am unable to see that this judgment in any way overrules or renders irrelevant the dictum of Lord Justice Atkin in *Rex* v. *Electricity Commissioners' case* (supra). Nor is it any warrant for the proposition that writ of *certiorari* would lie against a private person. Indeed the observations made therein give the lie direct to any such stand. In this context Lord Parker, C.J. observed as follows :—

> "The position as I see it is that the exact limits of the ancient remedy by way of *certiorari* have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining *a lis inter parties*. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. *The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari* since their authority *is derived solely from contract, that is, from the agreement of the parties concerned.*"

Ashworth, J. observed as follows:—

> "....If persons agree that issues which have arisen or may arise between them are to be referred to an arbitrator or a body of person, this court will not entertain an attempt to obtain relief by means of a prerogative writ. *In other words private or domestic tribunals are outside the range of an order of* certiorari.....
>
> .....For my part I doubt whether Atkin L.J. was propounding an all-embracing definition of the circumstances in which relief by way of *certiorari* would lie. In my judgment the words in question read in the context of what precedes and follows them, would be of no less value if they were altered by omitting "the rights of" so as to become "affecting subjects". *I regard the duty to act judicially, in a public as opposed to a private capacity, as the paramount consideration in relation to the relief by way of* certiorari."

It would be manifest from the above that public capacity and a duty to act judicially is still the paramount consideration for the issuance of a writ of *certiorari*.

37. I have with the closest attention persued the celebrated judgment of the House of Lords in *Ridge* v. *Baldwin and others* (supra) and find nothing therein which in any manner overrules or wipes away Lord Justice Atkin's celebrated observations in *Electricity Commsisioner's case* (supra). Indeed, Lord Reid after noticing the judgment closely analysed and explained its ratio and held only that the subsequent gloss placed thereon by Lord Hewart, C.J. in *The King* v. *Legislative Committee of the Church Assembly* (26), was not authoritative and disagreed with the same. In essence, therefore, *Ridge* v. *Baldwin and Ors* is a reaffirmance of the *Electricity Commissioner's case*. As is more than well known, the primary issue in *Ridge* v. *Baldwin and Ors. case* (supra) was with regard to the rules of natural Justice and their applicability and the nature, scope and the authorities to whom a writ of

(26) 1928(1) K.B. 411.

certiorari would issue did not even remotely come in for consideration. I must, therefore, hold that the rationale for the undermentioned observations of the learned Single Judge in *T. Gattaiah and others' case* (supra), in my humble view, are wholly unsustainable:—

> "....All in all, it must now be taken that the famous judgment of Atkin L.J. in *Rex* v. *Electricity Commrs.* (supra) cannot be fully applied to our Constitution and the above noted decisions which have merely followed that judgment can no longer be taken as laying down a correct law..... ...."

38. Yet again, some support was sought from the observations in *Rohtas Industries Ltd. and another* v. *Rohtas Industries Staff Union and others* (27), by the learned Single Judge in *T. Gattaiah and others' case* (supra) that writ of *certiorari* would lie against a private person. With the greatest respect, the aforesaid judgment is not open to any such construction. One of the issues before their Lordships of the Supreme Court in *Rohtas Industries'* case (supra) was whether a writ lies against the award of the Arbitrator under Section 10A of the Industrial Disputes Act. Now, there is no manner of doubt that the tribunal appointed to adjudicate on references under Section 10A of the Industrial Disputes Act is both a statutory tribunal and is patently one under a duty to act judicially or in any case *quasi* judicially. On these premises it was obviously undeniable that a writ would lie and the observations made therein again were with regard to the generality of all the writs under Article 226 of the Constitution. Nevertheless their Lordships of the Supreme Court sounded up a pungent note of caution in the following terms:—

> "....But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop."

The aforesaid wise and authoritative warning has to be heeded to rather than flouted by attempting to extend the jurisdiction beyond what their Lordships rightly called as wholesome inhibitions. Nor am I able to see how the authoritative judgment of their

(27) A.I.R. 1976 S.C. 425.

Lordships in *Ajay Hasia etc.* v. *Khaild Mujib Sehravardi and others etc.*, (supra), in any way overrules or atrophies the dictum of Lord Justice Atkin in *Electricity Commissioners' case* (supra). Indeed the latter judgment did not even remotely come in for consideration. Particular question with regard to the scope or nature of writ of *cetiorari was* never before the Court. All that flows from the judgment is that the instrumentality of the State or its projection was as much within the writ jurisdiction as the State itself under Article 12 of the Constitution. Therein it is nowhere said nor can it be even remotely inferred that a writ of *certiorari* could issue against a private person irrespective of the consideration whether he is charged with the duties of public or private nature or being obliged by law to act judicially or *quasi*-judicially.

39. In the aforesaid context it is equally necessary to recall that Chief Justice Kania speaking for the majority in the Constitution Bench in *Province of Bombay* v. *Khushaldas S. Advani (since deceased) and after him his legal representatives and others* (28), expressly noticed with approval the observations of Lord Justice Atkin in the *Electricity Commissioner's case* (supra) and concluded as follows:—

> "....Inconvenience or want of adequate remedy does not create a right to a writ of *certiorari*. It is clear that such writ can be asked for it two conditions are fulfilled. Firstly, the decision of the authority must be judicial or *quasi*-judicial, and secondly, the challenge must be in respect of the excess or want of jurisdiction of the deciding authority. Unless both those conditions are fulfilled, no application for a writ of *certiorari* can succeed. As, in my opinion, the decision of the Provincial Government about public purpose is not a judicial or *quasi*-judicial decision, there is no scope for an application for a writ of *certiorari*."

Now it seems to be true that C. J. Kania, as some other Judges agreeing with him also accepted as correct what is now universally labelled as the gloss of Lord Hewart, C.J. in *Legislative Committee*

(28) A.I.R. (37) 1950 S.C. 222.

of the Church Assembly's case (supra) on the dictum of Lord Atkin in *Electricity Commissioners' case* (supra). Indeed this was so done also by the Privy Council in *Nakkuda Ali* v. *M. F. De S. Jayaratha* (29). However, this super added gloss of Lord Heward, C. J. has now been authoritatively rejected by the House of Lords in *Ridge* v. *Baldwin and Ors.* (supra) and in terms by the final Court in *The Rampur Distillery and Chemical Co. Ltd.* v. *The Company Law Board, New Delhi and another* (30). Consequently without the super added gloss of Lord Hewart, C.J. the basic dictum of Atkin, L.J. in *Electricity Commissioners' case* (supra) stands approved by the final Court, in terms. No later judgment of the Supreme Court was even remotely brought to our notice in which the *Elecricity Commissioners' case* (supra) has either been deviated from or in any way disapproved or dissented. Once the final Court has placed its seal of approval on the rule in *Electricity Commissioners' case* (supra), it appears to me that it would hardly be the province of the High Courts to hold to the contrary in view of Article 141 of the Constitution of India. Reference in this context may also be made to the well-known case of *Hari Vishnu Kamath* v. *Ahmad Ishque and Ors.* (31). Therein, the scope and nature of a writ of *certiorari* came in for close examination. Reliance inevitably was placed before the Court on *Electricity Commissioners' case* (supra) which was in terms noticed by the Court without a hint of dissent or deviation therefrom. That the nature and scope of each one of the celebrated writs is different in manifest from the fact that in *Hari Vishnu Kamath's* (supra) their Lordships drew a clear line of distinction between a writ of *certiorari* and one of *prohibition*, though these are closely allied in nature.

40. That the dictum of Lord Justice Atkin in *Electricity Commissioners' case* (supra), with some inevitable developments therein, with the passage of sixty years, still holds the fields, is plain from the consideration of the subject in the authoritative work of the Constitutional Law of India by H. M. Seervai. Therein the whole discussion of the writ of *certiorari* has been made on the

(29) 1963 (1) Q.B. 539.
(30) A.I.R. 1970 S.C. 1789.
(31) A.I.R. 1955 S.C. 233.

anvil of Lord Atkin's statement of the principles. Particularly with regard to the writ of *certiorari* in India, the learned author says as follows:—

certiorari

"16.159. As before, the law will be stated with reference to Atkin L.J.'s statement of the principles which underlie the court's jurisdiction to issue *certiorari*.

16.160. The writ of *certiorari* lies not only against inferior courts *stricto sensu*, but to any person, body or authority having the duty to act judicially or the duty to act fairly. .. .. .."

41. Lastly I am of the view that apart from the issuance of a writ of *certiorari* even in the context of a writ of *mandamus*, the view taken by the learned Single Judge in *T. Gattaiah and others' case* (supra) is patently contrary to the binding precedent. The learned Single Judge had directed the *mandamus* against a limited company (in no way held to be a Government Company or an instrumentality or projection of the State) to continue the retrenched employees in their service with back wages for some alleged infraction of Chapter 5-B of the Industrial Disputes Act. In this context it deserves to recall that in *R. Nataranjan and others* v. *The Regional Assistant Commissioner of Labour, Hyderabad and others* (32), 40 workmen had filed a writ petition seeking a *mandamus* against the Praga Tools Corporatioon Ltd. for challenging their retrenchment in violation of settlement duly recorded under the provisionss of the Industrial Disputes Act. An objection was taken before the learned Single Judge that no writ petition for *mandamus* could lie against an employer company registered under the Companies Act. However, the learned Single Judge without deciding this preliminary objection, dismissed the writ petition on merits. On appeal the Division Bench of the Andhra Pradesh High Court held that the company being one registered under the Companies Act and not having statutory duty or function to perform was not one against which a writ petition for a *mandamus* or any other writ could lie. However, the

(32) I.L.R. (1967) A.P. 361.

Division Bench proceeded to grant a declaration in favour of the three workmen on the ground that the impugned agreement was illegal and void and dismissed the writ petition subject to the said declaration. On appeal by the Praga Tools Corporation, their Lordships of the Supreme Court in *Praga Tools Corporation* v. *C. V. Imanual and others,* (33), noticed that the only question which arose therein was whether in spite of the view of the High Court that the writ petition was not maintainable against the company, it could still grant the said declaration. Upholding the view of the High Court in this context, their Lordships of the Supreme Court first observed:—

> "....In our view the High Court was correct in holding that the writ petition filed under Art. 226 claiminb against the company *mandamus* or an order in the nature of *mandamus* was misconceived and not maintainable...."

and again observed:—

> "The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a *mandamus,* nor was therein its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

and concluded as follows:—

> "....In our view once the writ petition was held to be misconceived on the ground that it could not lie against a company which was neither a statutory company nor one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted. The High Court in these circumstances ought to have left the workman to resort to the remedy available to them under the Industrial

(33) A.I.R. 1962 S.C. 1306.

Disputes Act by raising an industrial dispute thereunder. The only course left open to the High Court was therefore to dismiss it. No such declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which was essentially of a private character between it and its workmen. The High Court, therefore, was in error in granting the said declaration."

It would be plain from the above that there is binding precedent for the proposition that no writ of *mandamus* can issue to a mere company registered under the Companies Act for the violation of any settlement expressly recorded or sanctified by the Indusrtial Disputes Act itself. In holding as above, their Lordships referred with approval to the earlier observations in *Shri Sohan Lal* v. *Union of India and another* (34), wherein it was observed as follows:—

".....Normally, a writ of *mandamus* does not issue to or an order in the nature of *mandamus* is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Laws of England Vol. II, Lord Simonds Edition, p. 84)."

In *Dr. Rai Shivendra Bahadur* v. *Governing Body of the Nalanda College, Bihar Sharif and others,* (35), the petitioner had sought a *mandamus* for appointment as Principal by virtue of statutes framed under the University of Bihar Act. Negativing such a claim their Lordships of the Supreme Court therein observed as follows:—

".....In order that *mandamus* may issue to compel the respondents to do something it must be shown that the

(34) A.I.R. 1957 S.C. 529.
(35) A.I.R. 1962 S.C. 1210.

Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because *assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus.* According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any Article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to Court and ask for a writ to issue. It is therefore not necessary to go into any other question."

Reiterating the aforesaid view by reversing the grant of *mandamus* by this Court, their Lordships of the Supreme Court in *The State of Haryana* v. *Subash Chander Marwaha and others* (36), held as follows:—

"It must be remembered that the petition is for a *madamus.* This court has pointed out in *Dr. Kai Shivendra Bahadur* v. *The Governing Body of the Nalanda College* (37), that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performanc.e Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right

(36) A.I.R. 1973 S.C. 2216.
(37) 1962 (2) Supp. S.C.R. 144.

under the rules to enforce its performance the petition is clearly misconceived."

42. It would be manifest from the above that to successfully invoke the *mandamus* jurisdiction, the petitioner has not only to show a clear public or statutory duty laid on the respondent but an equally clear legal right to enforce the same.

43. For the aforesaid detailed reasons, to conclude on this aspect, I would record my emphatic dissent from the observations in *T. Gattaiah and others' case* (supra), both as regards the nature and scope of the writ of *certiorari* (which, as noticed, did not arise for decision), as also with regard to the particular context in which the writ of *mandamus* has been granted.

4. To sum up it is held that where a society registered under the Punjab Co-operative Societies Act is in esssence an instrumentality or agency of the State, it would become amenable to the writ jurisdiction under Article 226 of the Constitution of India in the same manner as the State itself. The ratio in the earlier Full Bench case in *Ajmer Singh* v. *Registrar, Co-operative Societies, Punjab* (supra) is elaborated or qualified to the extent aforesaid.

45. It is further held that the Punjab Co-operative Land Mortgage Bank Limited (respondent No. 3) is not an instrumentality or a projcetion of the State.

46. For the detailed reasons recorded above, the primary relief of a writ of *certiorari*, claimed against respondent No. 3, is not maintainablle and the petition has, therefore, to be necessarily dismissed. In view of the somewhat ticklish questions involved, we leave the parties ot bear their own costs.