

**N.K. Aggarwal and Others Vs. Uoi and Others**

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**Court :** Delhi

**Decided On :** Sep-13-2012

**Judge :** The Honourable Acting Chief Justice Mr. a.K. Sikri Rajiv Sahai Endlaw

**Appeal No. :** LPA. Nos. 291 with 719 of 2002 & CM Nos. 5362 & 5363 of 2010

**Appellant :** N.K. Aggarwal and Others

**Respondent :** Uoi and Others

**Judgement :**

1. In both these appeals, the concerned body is Krishak Bharati Cooperative Ltd. („KRIBHCO“for the sake of brevity). The question posed is as to whether it is discharging any public function and, thus, amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

2. The learned Single Judge vide impugned order dated 15.2.2002 passed in W.P.(C) No.189/1996 (out of which LPA No.291/2002 arises) by referring to the judgment dated 09.1.2002 in W.P.(C) No.3035/1999 and other connected matters titled R.K. Mishra and Others Vs. Krishak Bharti Co-operative Limited (Kribhco), which is a society registered under the Registration Act, is not to be treated as “another authority” or “instrumental or agency of the State” within the meaning of Article 12 of the Constitution of India, having regard to the constitution of the society and its bye-laws, etc. inasmuch as none of the test laid down by the Supreme Court on this aspect are fulfilled. In the appeal, challenge on this count is

given up. However, the submission was that since KRIBHCO discharges public functions, it would still be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

3. In LPA No.719/2002, KRIBHCO is in appeal. Here the learned Single Judge in its impugned order dated 12.8.2002 has taken the view that even if KRIBHCO is not State under Article 12 of the Constitution, there is no impediment in invoking the jurisdiction of the High Court under Article 226 of the Constitution, if any, of the fundamental rights as enshrined in Part III of the Constitution are affected. In the brief order passed by the learned Single Judge for taking this view, reliance is placed on the judgment of the Apex Court in the case of U.P. State Co-operative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Ors. [(1999) 1 SCC 741].

4. Thus, the pure legal question which arises for consideration before us is identical in both the appeals on which submissions were made by the counsel for the parties.

5. Learned counsel for the appellant appearing in LPA No.291/2002 pointed out that in this very appeal, the Division Bench on earlier occasion had decided the issue vide judgment dated 03.10.2006. After detailed analysis, it had come to the conclusion that KRIBHCO was discharging public function and, therefore, it was amenable to writ jurisdiction. However, KRIBHCO had approached the Supreme Court challenging the said order and vide order dated 25.8.2008, the Supreme Court set aside the said order and remitted the case back for fresh consideration only because the reason that while deciding maintainability of writ petition under Article 226 of the Constitution, the Division Bench had not referred to counter affidavit filed by the Central Government and also did not consider the bye-laws of the society as amended upto March, 1995. His plea was that the Central Government in its affidavit has taken the position that KRIBHCO is not a State under Article 226 of the Constitution. Bye-laws of KRIBHCO society are also pressed into service from this angle. On this basis, it was his submission that since the said counter affidavit or bye-laws have no bearing on the issue of whether KRIBHCO is discharging any public function or not, the earlier opinion expressed

by the Division Bench vide orders dated 03.10.2006 needs to be reiterated. The learned counsel took us through that judgment wherein the character and functions of KRIBHCO are examined in detail to hold that it has discharged public function.

6. Mr. V.P. Singh, learned Senior Counsel appearing for the KRIBHCO, on the other hand, submitted that once the judgment dated 03.10.2006 has been set aside by the Supreme Court, the appellant cannot place any reliance thereupon and the issue needs to be examined afresh in the light of the submissions made by the counsel before this Bench.

7. It goes without saying that since the earlier judgment is set aside, we are examining the issue afresh.

8. In order to establish that the KRIBHCO was discharging public functions and public duties, the learned counsel for the appellant referred to the following features:

(i) Investments in companies; Community Development Programmes which included financial assistance for construction of rooms in primary school, sponsoring construction of hall in primary school, free distribution of study material to school students, supply of drinking water; Farmers Benefit Programmes; Adoption of 72 villages which included 6 Scheduled Castes and 5 Scheduled Tribes; Schools; Seed Multiplication Programmes;

(ii) Organisation of field demonstrations, lectures, exhibitions and distribution of informative literature to farmers free of cost;

(iii) KRIBHCO markets its products only through Cooperative and Institutional Agencies; and

(iv) Allocation under Essential Commodities Act.

9. Mr. Ravi P. Mehrotra, learned counsel who appeared in the other appeal for respondent No.1 laid stress on the following aspects to argue that KRIBHCO discharged public function:

- i) Substantial public money (67% of share capital) invested in KRIBHCO.
- ii) KRIBHCO is amenable to directions by Central Government in matters concerning public interest.
- iii) Equitable distribution of fertilizers at reasonable rates to farmers, community development programmes, adoption of villages for promotion of agriculture and rural development activities.
- iv) Organization of field demonstrations, lectures, exhibitions and distribution of informative literature to farmers free of cost.

10. Both the counsels have referred to various judgments laid down the principles to adjudge the meaning of public functions. These are:

(i) *AndiMukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R.*

*Rudaniand Ors. [(1989) 2 SCC 691]*, wherein the Court held as under:

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean everybody which is created by statute and whose powers and duties are defined by statute. So Government Departments local authorities, police authorities and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226 writs can be issued to a 'any person or authority". It can be issued "for the enforcement of any or the fundamental rights and for any other purpose".

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20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on

the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

(ii) LIC of India and Another Vs. Consumer Education and Research Centre and Others, [(1995) 5 SCC 482], the Apex Court held as under:

"53. We have, therefore, no hesitation to hold that in issuing a general life insurance policy of any type, public element is inherent in prescription of terms and conditions therein. The appellants or any person "or authority in the field of insurance owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society....."

(iii) Federal Bank Ltd. Vs. Sagar Thomas and Others [(2003) 10 SCC 733], the Supreme Court took the following view:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

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30. We may now consider the two decisions i.e. *AndiMukta* (supra) and the *U.P. State Co-operative Land Development Bank Ltd. (supra)* upon which much reliance has been placed on behalf of the respondents to show that a writ would lie against the appellant company. So far the decision in the case of *U.P. State Co-operative Land Development Bank Ltd. (supra)* is concerned, it stands entirely on a different footing and we have elaborately discussed it earlier.

31. The other case which has been heavily relied upon is *AndiMukta* (supra). It is no doubt held that a Mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the Ordinances, casting certain obligations which it owed to that petitioner. But it is not the case here. Our attention has been drawn by the learned counsel for the appellant to paragraphs 12, 13 and 21 of the decision (*Andi Mukta*) to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character.

32. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

(iv) G. Bassi Reddy Vs. International Crops Research Instt. And Another, [AIR 2003 SC 1764], wherein the Apex Court held that:

"28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty [Praga Tools Corporation v. C.A. Imanual, : (1969)IILLJ479SC ; Andi Mukta Sadguru Trust v. V.R. Rudani: (1989)IILLJ324SC ; VST Ind. Ltd. v. VST Ind. Workers' Union and Anr.: 2000(8)SCALE95 ]. ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of he activities of the institute, it certainly cannot be said that the

ICRISAT owes a duty to the Indian public to provide research and training facilities in *PragaTools Corporation v. C.V. Imanual* : (1969)11LLJ479SC , this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

".....an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. [See *Sohan Lal v. Union of India*, : [1957]1SCR738 ]

29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT."

(v) *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others*, [AIR 2003 SC 4531]. In this case, after holding that Kisan Sahkari Chini Mill was not State under Article 12 of the Constitution, the Supreme Court examined as to whether it was discharging any public function and held that aspect also in negative after deliberating the issue in the following manner:

"9. 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 *AndiMukta Sadquru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust and Ors. v. V.R. Rudani and Ors.*: (1989)11LLJ324SC 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. Krishna macharyulu and Ors. v. SriVenkateswara Hindu College of Engineering and Anr. [1997]2SCR368 and VST Industries Ltd. v. VST Industries Workers' Union and Anr., 2000(8)SCALE 95, 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.

(vi) Supriyo Basu and Others Vs. W.B. Housing Board and Others [(2005) 6 SCC 289]. In this case, West Bengal Housing Board was the respondent and it was held that it is not discharging any public function and, therefore, not amenable to writ jurisdiction. The relevant discussion, in this behalf, contained in Para 8 which reads as under:

“8. The rival stands need consideration on the core issue of maintainability of the writ petition, though several other issues were raised by learned counsel for the appellants. It is undisputed that the respondent-Society is a co-operative society constituted on agreement between members thereof who had agreed to abide by the provisions of the West Bengal Co-operative Societies Act, 1983, the Rules framed thereunder or the bye-laws framed by the Society. The Society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. Only if it is established that the mandatory provision of a Statute has been violated, a writ petition could be maintainable. Before a party can complain of an infringement of his fundamental right to hold property, he must establish that he has title to that property and if his title itself is in dispute and is the subject matter of adjudication in proceedings legally constituted, he cannot put forward any claim based on the title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether the

rights in or to that property have been improperly or illegally infringed could arise. The dispute as noted by the High Court essentially related to the claims of two rival groups of private individuals in relation to common car parking spaces. Learned Single Judge gave certain directions, which even touched upon the legality of the sale deeds. It was not open to be dealt with in a writ petition. As observed by this Court in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.* in relation to the question whether a writ petition would lie against a Cooperative Society the question to be considered is what is the nature of the statutory duty placed on it and the Court is to enforce such statutory public duty. The question as to entitlement of the members was to be discussed in the Annual General Body Meeting. The writ petitioners could not have questioned the decision of the Society to discuss the matter in the Annual General Body Meeting. We, therefore, find no merit in this appeal. The Society is free to convene a General Body Meeting and to discuss the rival claims regarding entitlement. We make it clear that we have not expressed any opinion on that aspect of the matter. The appeal fails, but without any order as to costs.”

(vii) *BinnyLtd. and Another Vs. V. Sadasivan and Others*, [(2005) 6 SCC 657], the Court highlighted that it is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. There cannot be any general definition of public authority or public action. The facts of each case decide the point.

After holding that the bodies involved in that case purely private authorities and, therefore, not amenable to writ jurisdiction, significantly, the Court also held that public-policy principles can be applied to employment in public sector undertakings in appropriate cases, but the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of the private sector. The

service rules and relations which are applicable to Government employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner.

Following observations are also to be necessarily noted as both the cases before us relate to termination of services of the employees:

“31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in *State of U.P. v. Bridge and Roof Co.* AIR 1996 SC 3515 and also in *Kerala State Electricity Board v. Kurien E. Kalathil* AIR 2000 SC 2573. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

11. On the basis of principles laid down in the aforesaid cases, we have to determine as to whether KRIBHCO discharges any public function or public duties. Clause 5(a) of the Bye-Laws of KRIBHCO stipulates the main object for which KRIBHCO was registered as society and reads as under:

“5(a) The objects of KRIBHCO shall be to promote the economic interest of its members by undertaking the business of manufacture, production, development, processing, conversion, sale, distribution, marketing, import, export, trade or otherwise deal in, store, or transport, build, construct, fabricate or otherwise turn to account, in India and abroad of chemical fertilizers, bio-fertilisers, man-made fibres, detergents, soaps, chemicals, petro-chemicals, refining, hydrocarbons, drugs and pharmaceuticals, industrial products, cement, steel, electronic products, satellite receives, pesticides, seeds, agricultural machinery and implements and other agricultural inputs/outputs, agricultural items, agro-based industrial items, food products, aquaculture, forestry products, power generation and distribution from conventional or non-conventional energy sources, automobiles, breweries, housing and real estate, construction and fabrication, and to provide/undertake the business of oil exploration, communication and telecommunication, information technology, shipping, trading, banking and insurance and to undertake such other activities which are conducive and incidental thereto.”

12. KRIBHCO is a federation. No individual is eligible for membership. It is open to categories specified in Clause 6, which includes National Cooperative Federations, Apex Cooperative Federations, Regional and District Cooperative, Primary Agricultural Cooperative, Consumers' Cooperatives, Tribal Cooperative Federations, etc. dealing with agriculture credit/marketing/processing/supply and other agricultural Cooperative Societies, etc. It is a multi-state cooperative societies registered under the Multi-State Cooperative Societies Act. It is also mentioned as National Cooperative Societies in the Second Schedule of the said Act. As is clear from the above, the main business of the respondent is to manufacture, distribute and sell chemical fertilizers. For this purpose, the society has set up manufacturing unit and the distribution of its product is done through cooperative societies spread all over India. Under Bye-Laws 5, the object of the KRIBHCO is to promote the economic interest of its members by undertaking fertilizers business. The membership of the society is open to various cooperative societies and some other bodies associated with agriculture. The society does not enjoy any monopoly in any business. The society does not discharge any statutory functions.

13. In our view, the aforesaid function does not become public function or public duty. It is purely commercial activity undertaken by KRIBHCO, which makes it a commercial organization working for the benefits of its members and through them of the farming community. As noticed above in *G. Bassi Reddy (supra)*, the Court had stated that though it would not be easy to define what a public function/public duty is. It can reasonably be said that functions are similar to or closely related to those performable by the State in its sovereign capacity.

14. In a number of cases cited above, we have noted that these kind of activities are not treated as public duties/public functions. In addition, we refer to recent judgment of the Division Bench of this Court in the case of *K.K. Saxena Vs. International Commission on Irrigation and Drainage and Ors.*, [180 (2011) DLT 204. In that case, the Court examined the functions of ICID which has been established as scientific, technical, professional and voluntary Non-Governmental international organisation, dedicated to enhance worldwide supply of food and fibre for all people by improving water and land management and productivity of irrigated and drained lands. That is for appropriate management of water, environment and application of irrigation, drainage and flood control techniques. These activities were held to be not public duties to make ICID to writ jurisdiction under Article 226 of the Constitution as is clear from Para 33 of the said judgment:

“33. On a perusal of the preamble and the objects, it is clear as crystal that the Respondent has been established as a Scientific, Technical, Professional and Voluntary Non-Governmental International Organization, dedicated to enhance the world-wide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in the realm of collection of data, research, holding of seminars and organizing studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its

role extends beyond the territorial boundaries of India. The memberships extend to participating countries and sometimes, as by-law would reveal, ICID encourages the participation of interested national and non-member countries on certain conditions.”

15. To be fair to the counsel for the appellant, it is necessary to deal with their submission on the basis of which they have endeavoured to convince this Court to hold that KRIBHCO is discharging public function. Their argument was that KRIBHCO has made substantial investments in companies such as IFFCO-Tokio General Insurance Company and Gujarat State Energy Generation Limited among others; it has established many Community Development Programmes, which look after the welfare of the Community at large and adopted villages and tribal areas; it had adopted 72 villages for community developments which include six Scheduled Castes and five Scheduled Tribes dominated villages; KRIBHCO was involved in construction activities in various schools; KRIBHCO runs various Farmers Benefit Programmes; conducts Crop Seminars, Farmers’ meetings, field demonstrations, technology melas, etc., Seed Multiplication programmes, etc.

16. We are afraid these functions may not have any bearing on the issue involved. We have already reproduced and stated the main objective of KRIBHCO. Merely because KRIBHCO is involved in philanthropic activities as well that would not change the main character of KRIBHCO. Those activities are in the nature of voluntary social responsibility, which term for private corporation is known as „Corporate Social Responsibility?. Such types of philanthropic and charitable activities are organized by private entrepreneurs as well. In order to determine the character of KRIBHCO and to ascertain whether it is discharging public function or public duty, it is the main activity carried on by the KRIBHCO which has been the focal point. Examined from that angle, we do not find that KRIBHCO is covered by the test laid down.

17. We are, therefore, of the opinion that KRIBHCO is not discharging any public functions or any public duties and, hence, is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

18. As a result, LPA No.291 of 2012 is dismissed affirming the order of the learned Single judge dismissing the writ petition. LPA No.719 of 2012 is allowed, thereby setting aside the impugned order of the learned Single Judge and as a consequence dismissing the writ petition filed by the respondent in this appeal.

However, there shall be no orders as to costs.

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