

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C)4033/2007 & CM 7598/2007
KRISHAK BHARTI ...Petitioner through
! CO-OPERATIVE LTD. Mr.V.P. Singh, Sr. Adv. with
Mr. Neeraj Malhotra and
Mr. Om Prakash, Adv.

-versus-

\$ UOI & ANR. ...Respondent through
^ Mr. P.P. Malhotra, ASG with
Ms. Manisha Dhir, Adv.

Date of Hearing : 10th September, 2008

% Date of Decision : 17th September, 2008

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

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|---|-----|
| 1. Whether reporters of local papers may
be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be
reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

J U D G M E N T

1. In this Writ Petition it has, *inter alia*, been prayed that a writ of certiorari be issued quashing the Order dated 6.12.2006 of the Government of India (GOI) directing the repatriation to the GOI of equity held by it in the Petitioner Society, namely, Krishak Bharti Co-operative Limited (KRIBHCO). It is necessary to reproduce the said Order, *inter alia*, to demonstrate that it fails altogether to

address or adumbrate the nature of the public interest which it endeavours to protect or project:-

WHEREAS the Krishak Bharti Cooperative Ltd. (KRIBHCO), a Multi-state Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002 (39 of 2002) and is a fertilizer production unit in the Cooperative Sector and as per item 5 of Schedule II to Rule 3 of the Government of India (Allocation of Business) Rules is under the administrative responsibility of the Department of Fertilizers;

AND WHEREAS the Government of India is a member and a majority shareholder in the said KRIBHCO;

AND WHEREAS the said KRIBHCO, pursuant to the amendment to its Bye-Law No.8, unilaterally and without either the approval or concurrence of the Government of India, has been repatriating the Government of India equity held in the said Society, an Act which has been expressly being objected to by the Department of Fertilizers;

AND WHEREAS the matter regarding the amendment of Bye-Laws by the KRIBHCO and the unilateral repatriation of GOI equity is under examination by the competent authority in the Government of India;

AND WHEREAS inspite of the refusal of the Department to accept the unilateral repatriation of GOI equity and consequent return of the cheques received in this regard to the KRIBHCO,

the said Society has been persisting with the attempts for repatriation of GOI equity and the Central Government is satisfied that in public interest and in order to secure proper management of the business of the said KRIBHCO, it is necessary to issue a direction to the said Society;

NOW, THEREFORE, in exercise of the powers vested under section 122 of the Multi-State Cooperative Societies Act, the Central Government, hereby directs that the KRIBHCO shall cease forthwith its attempts to repatriate GOI equity held in the said Society and desist from bringing any resolution/agenda item in the Board/General Body proposing to enable the Society or its Management for repatriation of GOI equity without the specific written and prior approval of the Department of Fertilizers;

Any violation of the above directive shall render the KRIBHCO liable to the action as specified under section 123 of the MSCS Act.

2. The Petitioner asserts that upon the enactment of the Multi-State Co-operative Societies Act, 2002 (for short 'MSCS Act'), the Petitioner had proposed to amend its existing Bye-laws Numbers 8 and 29(ii) allegedly to make it fall in line with the provisions of the said statute. It appears that on 7.9.2002 the Board of KRIBHCO

had approved these amendments. The earlier, as well as the current provisions, are reproduced in juxtaposition:-

Previous Bye-law	Bye-law after amendment
8. KRIBHCO may retire partially or fully the shares held by the Government of India, the National Cooperative Development Corporation, IFFCO and the Govt. Organisations, at such time and in such manner as may be agreed upon between it and the Government of India/National Cooperative Development Corporation/IFFCO and the Govt. Organisations as the case may be. 29 (ii) Amendment or repeal of any existing Bye-law or enactment of any new Bye-laws <u>provided that all such amendment(s) will require the approval of the Government of India and IFFCO until such time as the Share Capital subscribed by the Government of India and IFFCO is fully retired;</u>	8. (a) KRIBHCO <u>shall quarterly</u> retire the shares held by the <u>members other than cooperatives like</u> Government of India, the National Cooperative Development Corporation <u>and public Financing Institutions to the extent that the cooperative members subscribe to the equity of KRIBHCO in order to facilitate greater participation and representation of cooperative members in KRIBHCO.</u> 30 (ii) Amendment or repeal of any existing Bye-law or enactment of any new Bye-laws <u>in accordance with the procedure prescribed in the Act and the Rules made thereunder;</u>

3. By Notice dated 13.9.2002, under Bye-law 32, the Agenda of the 22nd Annual General Body Meeting (AGM) was circulated to the Members/Delegates of KRIBHCO of which Item (VII) was "Consideration of Amendment to the Bye-laws of the Society". The Notes in respect of this Agenda Item are as follows:

Further, as per the laid down principles of law, the Bye-laws are subservient to the Act and therefore, wherever the provisions of the Bye-laws are in conflict or repugnant to the provisions of the Act, the same shall not be applicable and the Act shall prevail. According to Section 126 of the MSCS Act, 2002, KRIBHCO would be deemed to be registered under the new Act and Bye-laws of KRIBHCO shall, in so far as they are not inconsistent with the provisions of the new Act, or the Rules, continue to be in force until altered and rescinded. Therefore, the Bye-laws of KRIBHCO to the extent they are inconsistent with the new Act would be inoperative and void and in their place the provisions of MSCS Act, 2002 would be legally in force.

In view of the above, certain clauses of the existing Bye-laws which are not in consonance with MSCS Act, 2002 require amendment. It is, therefore, proposed to make suitable changes in some of these clauses of the existing Bye-laws

which require immediate attention, to bring them in conformity with the provision of the MSCS Act, 2002.

4. In regard to Item (VII) the following Resolution was passed:-

“RESOLVED THAT the proposed amendments to the existing Bye-laws of KRIBHCO, as given at Annexure-I, be and are hereby approved.”

“RESOLVED FURTHER THAT the Managing Director be and is hereby authorised to take further necessary action in the matter”.

5. Annexure-10 to the Petition reveals that in total there were 589 delegates in the Multi-State Cooperative Society and that 512 delegates attended the 22nd AGM of KRIBHCO; and that the said amendments to the Bye-laws were carried unanimously. Thereupon, a request was made to the Central Registrar of Co-operative Societies, New Delhi, requesting him to incorporate the proposed amendments to the Bye-laws of KRIBHCO in terms of the Order dated 7.10.2002, which was accompanied by a Certificate under Section 11(4)(f) of MSCS Act. Apart from senior IAS officers representing sundry Co-operative Banks, Shri Hari Pal had attended the said AGM as the Nominee of the GOI, Ministry of Chemical and Fertilizers. The Resolutions extracted above were duly confirmed at the succeeding

23rd AGM of KRIBHCO held on 31.7.2003, in which the GOI was, once again represented by its Nominee Shri Hari Pal. The Central Registrar of Cooperative accorded registration to these amendments on 26.12.2002.

6. The contention of Mr. V.P. Singh, learned Senior Counsel for the Petitioner, is that the amendments were duly and legally passed at the 22nd AGM. The MSCS Act prescribes in Section 11(2) that amendment to the Bye-laws of a Multi-State Co-operative Society shall be made by a Resolution passed by a two-third majority of the members present and voting at General Meeting of the Society. It has not been argued that if the Bye-laws are irreconcilable with or are contrary to the statute, they would be liable to be struck down as *ultra vires* the MSCS Act. Mr. P.P. Malhotra, learned Additional Solicitor General (ASG), however, contends to the contrary. Bye-law 29 (ii) contains the provisions regulating the procedure for amendments to the Bye-laws in these words:-

29. The following, among other matters, shall be dealt with by the General Body:

..

(ii) Amendment or repeal of any existing Bye-law or enactment of any new Bye-laws provided that all such amendment(s) will require the approval of the Government of India and IFFCO until such

time as the Share Capital subscribed by the Government of India and IFFCO is fully retired;

7. The learned ASG has argued that Bye-law 29(ii) necessarily postulates the written approval of the GOI, if not the prior written approval. On this point, we are in no manner of doubt that there is no scope for introducing the word 'prior' into the Bye-laws as also the requirement of written approval. It is trite that approval of any issue can be conveyed by the concerned or relevant party in myriad ways, one of the most efficacious of which would be by the conduct of the approving party. The subject amendment was first discussed in the KRIBHCO Board and was followed-up by the unanimous Resolution to this effect by the General Body in its 22nd AGM. Section 11 of the MSCS Act immediately came into play. Prior notice of the proposed amendment was duly given. It is indeed significant that the amendment was carried unanimously. Till this stage, therefore, rather than there being even a hint of opposition, there was, in fact, unanimous support for the amendment in the Respondents' ranks. The GOI was duty-bound and obligated to instruct its Nominee to oppose the

amendment, in case it was of this opinion. Although the investment made by the GOI was as high as sixty per cent of the entire stock of KRIBHCO, in terms of MSCS Act as well as the Bye-laws of KRIBHCO, its voting strength was on parity with that of any other member. Nevertheless, it was essential for the Government Nominee/Delegate to have recorded opposition to the proposed amendment by entering a dissenting vote, especially since it had not previously conveyed its opposition to the amendment in response to the Agenda of the 22nd AGM. Any person possessing of knowledge or experience in the functioning of a Company or a Society would not have neglected in placing its opposition to the amendment, in writing, at the very earliest.

8. In this regard, the following observations of the Hon'ble Supreme Court in the *Co-operative Central Bank Ltd. -vs- Additional Industrial Tribunal, Andhra Pradesh*, 1969(2) SCC 43 leaves no room for debate:

10. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of

law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that

can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such articles of Association have never been held to have the force of law.

9. On the strength of this Judgment, a Division Bench of this Court in *Jagjit Singh Sangwan -vs- Union of India*, 1996 (36) DRJ(DB) has held that the Bye-laws of a Co-operative Society have the purpose of regulating its internal management and that these Bye-laws do not have the force of law. It was further opined that Article 226 is not available for securing enforcement of the Bye-laws of a Co-operative Society. The dealings between the members or shareholders of a society governed by the MSCS Act, regardless of whether it is the GOI which is the one concerned, falls in the realm of contract.

10. So far as the conduct of the Government is concerned, it had, on several previous occasions, encashed payments received from KRIBHCO towards redemption of its shares without any demur. The following Table shows that as much as Rupees 22.31 crores had been returned to the Government by KRIBHCO, by means of seven cheques:-

ANNEXURE-I

DETAILS OF SHARE CAPITAL RECEIVED FROM COOPERATIVE SOCIETIES AND REFUNDED TO GOVERNMENT OF INDIA

AS ON 31-12-2006
(Rupees in lacs)

SL. NO.	QUARTER / PERIOD		SHARES ALLOTTED			APPROVD BY BOARD FOR REFUND TO GOI			
	FROM	TO	NEW SOCIETIES	ADDITIONAL ALLOTMENT	CAPITAL RECEIVED	MEETING DATE	AMOUNT APPROVED	AMOUNT REFUNDED	DATE OF REFUND
Details of cheques encashed by Govt. of India									
1	01/01/03	31/03/03	29.10	104.60	200.10	24/04/03	133.70 *		
				86.40		14/08/03	66.40 *	200.00	20/08/03
2	01/04/03	30/06/03	17.45	62.60	80.05	30/07/03	80.05	80.00	13/08/03
3	01/07/03	30/09/03	9.40	18.75	28.15	30/12/03	28.15	28.00	12/01/04
4	01/10/03	31/12/03	8.40	12.60	21.00	01/03/04	21.00	21.00	17/03/04
5	01/01/04	31/03/04	12.60	90.80	103.40	26/04/04	103.40	103.00	14/05/04
6	01/04/04	30/06/04	220.60	159.50	380.10		380.10 }		
7	01/07/04	30/09/04	48.30	1370.25	1418.55	25/08/04	1418.55 }	1799.00	14/09/04
			345.85	1886.60	2231.35		2231.35	2231.00	
Details of cheques not encashed by Govt. of India									
8	01/10/04	31/12/04	255.00	2142.25	2397.25	15/02/05	2397.25	2397.00	09/03/05
9	01/01/05	31/03/05	226.35	507.85	734.20	17/03/05	734.20	734.00	22-23/03/05
10	01/04/05	30/06/05	67.65		67.65	04/08/05	67.65	68.00	09/08/05
11	01/07/05	30/09/05	174.30		174.30	15/11/05	174.30	174.00	18/11/05
12	01/10/05	31/12/05	204.50		204.50	24/03/06	204.50	205.00	31/03/06
13	01/01/06	31/03/06	110.00		110.00	21/04/06	110.00	110.00	28/04/06
14	01/04/06	30/06/06	35.70		35.70	07/07/06	35.70	35.00	24/07/06
15	01/07/06	30/09/06	74.70		74.70	15/11/06	74.70	75.00	16/11/06
			1148.20	2650.10	3798.30		3798.30	3798.00	
TOTAL :			1494.05	4535.60	6029.65		8261.00	6029.00	**

* Allotment made w.e.f. 31.03.2003

** Since all the shares held by GOI are of Rs.1.00 lakh denomination, a round sum of Rs.6029.00 lakh has been repatriated to GOI.

	(Rs. Crore)
Total share capital contribution of Govt. of India	328.00
Less: Share Capital refunded to Govt. of India	60.29
Balance share capital of Govt. of India	267.71

11. Shri Hari Pal had addressed a Letter dated 14.1.2004 on behalf of the GOI, Ministry of Chemicals and Fertilizers, Department of Fertilizers to the Managing Director of

KRIBHCO, forwarding therewith Share Certificate No.18 amounting to Rupees 25 crores for making endorsement of repatriation of GOI equity by KRIBHCO to the tune of Rupees 2.80 crores, reducing it to Rupees 22.20 crores. Thereafter, by Letter dated 22.1.2004, Shri Hari Pal acknowledged receipt of Rupees 28 lacs towards retirement of GOI equity in KRIBHCO, further requesting amendment to Share Certificate No.18, showing its reduced value to Rupees 21.71 crores. Letter dated 31.3.2004 is of similar character acknowledging that Share Certificate No.18 is reduced to Rupees 21.71 crores.

12. It is apparent that the GOI has now endeavoured to refund or return these sums, in our view, because of a reversal of thinking. This was not a consequence of the so-called unilateral action of KRIBHCO or for the reason that the approval of the Government to the amendments had not been given at any prior stage, as the learned ASG now contends. In our view, the principles of estoppel clearly militate against the argument raised on behalf of the GOI. Black's Law Dictionary defines estoppel as a "bar that prevents one from asserting a claim or right that contradicts what one has done before". As we have already mentioned, the GOI could have recorded and/or articulated its opposition to the amendment in immediate response to the Agenda of the 22nd AGM, or by recording its

dissent at the 22nd AGM, or by declining to accept or encash the repatriated or retired equity. Our conclusion is that the GOI had agreed or approved of the subject amendment in terms of the Bye-law 29. One of the main reasons for this tact consent must have been a consequence of the avowed policy, in consonance with the global ethos of the Co-operative Movement, which is to encourage the widest participation of the parties concerned by means of membership of the Co-operative Society concerned and that such entities should be self governing, as contemplated in the Manchester Declaration (infra).

13. We are fully mindful that the writ Court should always be reluctant in interfering with a policy devised by the Government unless it is wholly unreasonable in the Wednesbury sense, or if it is manifest that the subject policy is violative of Article 14 of the Constitution of India. This position has been reiterated in *Balco Employees' Union (Regd.) -vs- Union of India*, (2002) 2 SCC 333 where their Lordships opined – “In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same

is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court". In similar vein, the Hon'ble Supreme Court has enunciated in *State of Orissa – vs- Gopinath Dash*, JT 2005 (10) 484 that – "The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decision or exercise of discretion by the Government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government". In *Tata Cellular –vs- Union of India*, (1994) 6 SCC 651, while delineating the parameters of Wednesbury unreasonableness, their Lordships laid down that the grounds upon which an administrative action is subject to control by judicial review can be classified as illegality, or irrationality, and/or procedural impropriety.

14. In our opinion, the ostensible stand taken on behalf of the GOI in the present case is, in fact, contrary to the Policy preferred and prescribed by the GOI, which is to be found in the First Schedule to the MSCS Act. These tenets have been

borrowed verbatim from the Declaration of the Manchester International Co-operative Congress, 1995. Paragraph 4.1 of the National Policy on Co-operatives clarifies that – “The ideology of cooperatives is based on the principles of self-help, self-responsibility, democracy, equality, equity and solidarity”. The said Policy, in its paragraphs 7 (i) and (vi), *inter alia*, reads thus:-

7(i) While upholding the values and principles of cooperation, it recognizes the cooperatives as autonomous associations of persons, united voluntarily to meet their common economic, social and cultural needs and aspirations through jointly owned and democratically controlled enterprises.

...

(vi) accepts the need to phase out its share holdings/equity participation in the cooperatives. It shall, however, endeavour and extend appropriate support for improving financial viability and resource mobilization by harnessing local savings and adequate refinance facility, and to the possible extent providing a policy framework to ensure that there is no discrimination against the cooperatives in the matter relating to resource mobilisation to attain financial viability. The cooperatives shall be enabled to set up holding companies/subsidiaries, enter into strategic partnership, venture into futuristic areas like insurance, food processing and information technology etc. and shall be independent to take the

financial decisions in the interest of the members and in furtherance of their stated objects;

15. Paragraph 2.3 of the Ninth Report of the Standing Committee on Petroleum and Chemicals (1999-2000) contains a Recommendation that the Government should initiate action for transferring more capital to co-operatives in a phased manner. The following paragraphs are topical and require reproduction:-

2.9 The Committee note that as against authorised share capital of Rs.500 crore of KRIBHCO, the paid-up capital was Rs.484.25 crore as on 31st March, 2000. The Committee also note that majority of shares in KRIBHCO are being held by the Government. Out of Rs.484.25 crores paid-up capital as much as Rs.328 crore are held by Government. The Standing Committee on Petroleum & Chemicals (1994-95), 10th Lok Sabha had also examined the matter and in their 13th Report on IFFCO and KRIBHCO, presented to the Parliament on March, 1995, had recommended that the Government should transfer more share capital to cooperatives in a phased manner for making IFFCO and KRIBHCO real cooperatives in character. However, during the course of examination the Committee found that the desired transfer of equity in KRIBHCO has not taken place. During the last six years the Committee found that share of government has come down

from 71.94% to 67.73% whereas share of cooperatives has marginally increased from 6.74% to 12.23%. The Committee have been informed that since the cooperatives are not financially strong, these are not able to enrol themselves as members. The Committee have also been informed that still there was a scope for small cooperatives to participate in equity of KRIBHCO since there was a gap of Rs.15.75 crore between authorised share capital and paid-up share capital of KRIBHCO.

2.10 The Committee have been informed that in order to encourage small societies to become members of KRIBHCO, Government have allowed KRIBHCO to reduce the face value of its share from Rs.20,000 to Rs.10,000 per share and also to convert 500 shares of face value of Rs.1 lakh per share into 5000 shares of face value of Rs.10,000 per share. The Committee have also been informed that direct transfer of share from Government to Cooperatives is not allowed under Multi-State Cooperatives Act, 1984. The Committee would like to emphasise that the thrust of their recommendation is to impart real Cooperative character to KRIBHCO and it can be done if Government's equity is regularly decreased with corresponding increase in the equity held by Cooperative Societies. Government should devise the ways and means to achieve this objective, whether through amendment to MSCS Act, 1984 or amending the bye-laws. However, as an immediate measure, KRIBHCO should initiate action such as

special drive to increase its membership substantially so that the remaining equity of Rs.15.75 cores is contributed by Cooperative Societies within a targeted period say of two years. Government should extend all necessary help expeditiously in this regard. The DOF should act as a Nodal agency and liaise with various agencies and get suitable guidelines issued to banks/district cooperative credit banks to give loans to farmers for acquiring membership of the Society.

16. It appears plain to us that it was by way of the implementation of this Policy that the entire equity invested by the GOI in Indian Farmers Fertiliser Cooperative Limited (IFFCO) has been retired or repatriated. In this case, it will also be relevant to mention that IFFCO Bye-laws are identical in vital contents to those of KRIBHCO. As in the case of KRIBHCO, the GOI had not objected to the amendment of the Bye-laws which amendments have the avowed purpose of facilitating the smooth as well as convenient retirement and return of the investment of the GOI in the said Cooperative Society, linked to a corresponding increase in its membership. Indubitably, there is substance in the argument advanced by Mr. V.P. Singh that if different treatment is to be accorded by the GOI to IFFCO and KRIBHCO, a violation of Article 14 of the Constitution would inexorably occur. The

retirement of GOI equity was effected after amendments carried out in the Bye-laws of IFFCO, which are evidently similar to those effected in KRIBHCO from a perusal of this Table:-

Previous Bye-law	Bye-law after amendment
6. IFFCO may retire the shares held by the Government of India, National Cooperative Development Corporation and Public Financing Institutions at such time and in such manner as may be agreed upon between it and the Government of India/National Cooperative Development Corporation/Public Financing Institutions, as the case may be.	6. IFFCO shall quarterly retire the shares held by the non co-operative members like Government of India, and Public Financing Institutions to the extent that the cooperative members subscribe to the equity of IFFCO in order to facilitate greater participation and representation of cooperative members in IFFCO.

17. We have already referred to the position adopted by the GOI in treating the repatriation of GOI equity in KRIBHCO as a unilateral action of the latter. This stance had been articulated in the letter dated 7.9.2006 of the Department of Fertilizers

addressed to KRIBHCO wherein the GOI had sought to invoke the unamended Bye-law 29 (ii), and had asserted that “the certificate given by the Presiding Authority was without any approval from the Central Government”. In the concluding paragraph of the said letter it has been stated that “pending receipt of the advice from the Law Ministry and subsequent Resolution of the whole issue, no more unilateral repatriation of Government equity may be resorted to by Kribhco.” A perusal of Letter dated 2.12.2002, addressed by the Chief Director (Coop) to the Joint Secretary, Department of Fertilizers, supports the argument that the amendment, in fact, has the tacit approval of the GOI. In the letter the Joint Secretary was reminded of the proposed amendments in the Bye-laws received from IFFCO. Thereafter, the amendment proposals in the Bye-laws of KRIBHCO were enclosed for the comments. Indeed, no response to either of the amendments was made.

18. It is indeed surprising that the Respondent/UOI has obdurately opposed this Petition despite the written opinion of the learned Attorney General to the effect that the unamended Clause 27(ii) does not envisage prior approval in writing; that the Government had agreed to the amendment for the reason that had it opposed it, the amendment would not have obtained

the requisite two-third majority; that the Registration Certificate cannot be cancelled by the Registrar in the absence of any express provision; that the direction contemplated by the GOI to IFFCO to amend the Bye-laws so as to restore status-quo ante the amendment would be violative of Section 11(2) of the MSCS Act. The GOI has also attempted to argue contrary to the letter dated 5.2.2007 of the Additional Secretary, Ministry of Agriculture to the effect that there was no compelling or convincing reason to amend Section 35(2) of the MSCS Act which prescribes that the redemption of shares shall be on the face value of the shares. The Note appended to this Letter renders the Counter-Affidavit totally irreconcilable with the policy of the GOI in respect of Co-operative Societies as well as to the written opinion of the learned Attorney General which is fully binding on Respondents.

19. Mr. P.P. Malhotra, learned ASG, has vehemently argued that the Registrar of Co-operative Societies had incorrectly permitted the amendment to the Bye-laws and, therefore, is duty-bound to reverse it and thereby restore status quo ante. We cannot countenance this argument in view of the pronouncement in *H.C. Suman -vs- Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi*, (1991) 4 SCC 485 which lays down that "a quasi judicial

order once passed and having become final cannot be reviewed by the authority passing that order unless the power of review has been specifically conferred". Accordingly, upon the Central Registrar of Cooperative Societies according registration to the amendments, it had become *functus officio* and that Order could not thereafter be reviewed by it. It is indeed significant that despite the passage of considerable time, the Government of India has not initiated legal proceedings to reverse or nullify the Registration, assuming that this was possible in law.

20. The learned ASG has sought to convince us that Bye-law 8 (a) prohibited the retirement of shares held by the GOI. We are unable to accede to his argument. The Bye-law clearly envisages that KRIBHCO can retire, each quarter, the shares held by the GOI, the NCDC and the Public Finances Institutions to the extent that the Co-operative Members make a corresponding subscription. However, Bye-law 8(a) does not empower KRIBHCO to retire the shares held by 'Cooperative' in contradistinction to the GOI, NCDC and the Public Financing Institutions. The use of the words "other than" leaves no room for debate.

21. For these manifold reasons, we find no merit in the opposition of the Respondents to the Writ Petition. We accordingly quash the impugned Order dated 6.12.2006 issued

by Respondent No.1, being untenable in law. The GOI cannot but act in compliance with the extant Bye-laws of KRIBHCO, and especially Section 35 of the MSCS Act.

22. Since the stand of the GOI and its opposition to the Writ Petition is found to be contrary to law, and to the Bye-laws of KRIBHCO, and diametrically opposes to the written opinion of the learned Attorney General of India, the Petition is allowed in the above terms, subject to payment of Rupees 50,000/- as costs payable by Respondent No.1 which is directed to be deposited in favour of the Chief Minister Relief Fund, Bihar within two weeks from today.

(VIKRAMAJIT SEN)
JUDGE

September 17, 2008
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(S.L. BHAYANA)
JUDGE