

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13116 of 2015

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Birendra Singh, son of Late Sharda Singh, resident of village- Bariyarpur, Akaurah,
P.S.- Dinara, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. Central Cooperative Bank Ltd., Ara having its office at Tapeshwar Bhawan, Mangal Pandey Path, P.O. & P.S.- Ara, District- Bhojpur through its Managing Director.
4. Managing Director, Central Cooperative Bank Ltd., Ara having its office at Tapeshwar Bhawan, Mangal Pandey Path, P.O. & P.S.- Ara.
5. General Manager, Central Cooperative Bank Ltd., Ara having its office at Tapeshwar Bhawan, Mangal Pandey Path, P.O. & P.S.- Ara.
6. Sri Rishikesh Tiwari, Chairman, Central Cooperative Bank Ltd., Ara.
7. Krishna Kumar Singh, Chairman, Central Cooperative Bank Ltd., Ara.
8. Din Dayal Pal, Director, Central Cooperative Bank Ltd., Ara.
9. Birendra Prasad, Director, Central Cooperative Bank Ltd., Ara.
10. Janardan Rai, Director, Central Cooperative Bank Ltd., Ara.
11. Keshav Prasad Singh, Director, Central Cooperative Bank Ltd., Ara.
12. Savita Devi, Director, Central Cooperative Bank Ltd., Ara.
13. Sushila Devi, Director, Central Cooperative Bank Ltd., Ara.
14. Mukul Kumar Sinha, Managing Director, Central Cooperative Bank Ltd., Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Advocate Mr. Uma Kant Tiwary, Advocate Mr. Arvind Kr. Jha, Advocate
For respondent Bank	:	Mr. Ishwari Singh, Advocate
For the Respondent/s	:	Mr. Sarvesh Kr. Singh, AAG-13 Mr. Ravi Kumar, AC to AAG-13

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 20-12-2016

The present matter has been referred to the Division

Bench by the learned Single Bench on 25th of August, 2015 to



examine the question as to whether the writ application can be said to be maintainable against the order of punishment dated 31st of October, 2014 (Annexure-20) in view of an earlier order passed by the learned Single Bench of this Court in C.W.J.C. No.11691 of 1994 on 2.11.1999 (Birendra Singh Vs. State of Bihar & Ors.) wherein it was held that the writ application is maintainable against the order of punishment of an employee of the Cooperative Society. Such order was affirmed in L.P.A. No.1541 of 1999(Central Cooperative Bank, Arrah & Anr. Vs. Birendra Singh & Ors.) on 12th of December, 2000. However, in a latter five Judge Bench Judgment, reported in 2014 (1) P.L.J.R. 695 (The Organizer, Dehri C.D. & C.M. Union Ltd. vs. The State of Bihar & Ors) it was held that the writ application against the Cooperative Society is not maintainable. The relevant findings read as under:

“51. Thus, seen and applying all the tests I have no manner of doubt that Dehri Co-operative Development & Cane Marketing Union Limited, a co-operative registered under the Bihar & Orissa Co-operative Societies Act, 1935, by itself cannot be deemed to be ‘State’ within the meaning of Article 12 of the Constitution. It has no State funding. It has independent Board of Management though the Chairman is ex-officio Sub-Divisional Officer, but he is only one in the Board of Management, which Board of Management is elected by different private co-operatives. It performs no public function.

52. Here I may refer to a Division Bench



judgment of this Court in the case of **Harendra Narain Banker vs. The State of Bihar**, since reported in 1985 P.L.J.R. 1078. The question was whether Bihar State Co-operative Marketing Union Limited (BISCOMAUN) is an instrumentality or agency of the State and consequently amenable to writ jurisdiction. Court analyzed the provisions and the constitution of BISCOMAUN. It held that even though almost 99% of the share holding was of the State Government, its Managing Director being appointed by the Government being a Government employee, its Apex Managing Committee and its Chairman being all elected by other Co-operatives, as such in the Apex Managing Committee, the Government had hardly any say. It was not performing any public duty or public function for and on behalf of the Government. Thus, the cumulative effect was no deep and pervasive control nor public duty or public function and as such it was not 'State' or State instrumentality or agency and writ petition was not maintainable. In view of the judgments of the Apex Court as noticed above, the view taken by this Court in that case cannot be doubted."

2. Learned counsel for the petitioner refers to a Supreme Court order, reported in AIR 1988 SC 1531, (A.R. Antulay Vs. R.S. Nayak & Anr.) to contend that the issue regarding maintainability of the writ application stands decided by the learned Single Bench of this Court and later by the Division Bench, therefore, the inter party decision is binding on the respondents and the writ application would be maintainable in view the principles of



res judicata, the reliance was on the following para:-.

“27. It was submitted that power under S. 526 of the old Code corresponding to S. 407 of the new Code can be exercised qua a Special Judge. This power, according to Shri Jethmalani, is exerciseable by the High Court in respect of any case under S.407(1) (iv) irrespective of the Court in which it is pending. This part of the section is not repealed wholly or pro tanto, according to the learned counsel, by anything in the 1952 Act. The Constitution Bench, it was submitted, consciously exercised this power. It decided that the High Court had the power to transfer a case to itself even from a Special Judge. That decision is binding at least in this case and cannot be reopened, it was urged. In this case what was actually decided cannot be undone, we were told repeatedly. It will produce an intolerable state of affairs. This Court ought to recognise the distinction between finality of judicial orders qua the parties and the reviewability for application to other cases. Between the parties even a wrong decision can operate as *res judicata*. The doctrine of *res judicata* is applicable even to criminal trials, it was urged. Reliance was placed on *Bhagat Ram v. State of Rajasthan*, (1972) 2 SCC 466: (AIR 1972 SC 1502). A judgment of a High Court is binding in all subsequent proceedings in the same case; more so, a judgment which was unsuccessfully challenged before this Court.”

3. We have heard learned counsel for the parties and find that the cause of action in the earlier round of litigation was the order of punishment dated 16th of August, 1994. It is the said orders which were set aside in the earlier writ application on 2nd November, 1999 and affirmed by the Division Bench on 12.12.2000.

4. The challenge in the present writ application is the



order of punishment dated 31st of October, 2014. Therefore, the present writ application is based on a separate and distinct cause of action than the earlier writ application in which challenge was to the orders of punishment passed earlier. The finding recorded in the earlier writ application, as affirmed in the Letters Patent Appeal, is that the writ application is maintainable against the Cooperative Society, but in view of the latter Larger Bench Judgment, the writ application is not maintainable. The principles of *res judicata* cannot be extended to the present case inasmuch as the cause of action in both the proceedings is different, i.e. orders of punishment. Since the cause of action is different, therefore, the writ application cannot be said to be maintainable in view of Larger Bench judgment in The Organizer, Dehri C.D. & C.M.'s case (supra).

5. The question of maintainability of writ petition against a Cooperative Society has again been examined by a Division Bench of this Court in L.P.A. No.119 of 2015 (The Chairman, Bihar State Co-operative Marketing Union Employees Provident Fund Trustee Committee -cum- Managing Director, Bihar State Co-operative Marketing Union Ltd. & Anr. Vs. Ram Swarath Singh & Ors.) decided on 27th October, 2016 wherein it has been held as under:

“8. The Special Bench in The Organizer, Dehri C.D. & C.M. Union Limited's case (supra) returned a finding that



BISCOMAUN is not performing any public duty or public function for and on behalf of the Government. The cumulative effect is that no deep and pervasive control nor public duty or public function is being performed by the BISCOMAUN and the writ application is not maintainable.

9. In the light of the said judgment, which was announced subsequent to the order passed by the learned Single Bench, the invocation of jurisdiction against BISCOMAUN is not tenable.”

6. Learned counsel for the petitioner submits that the judgment of Special Bench is not applicable to the present case as the petitioner is an employee of a Bank, governed by the Banking Regulation Act and akin to Scheduled Bank. The Special Bench was dealing with Cane Development Society or the BISCOMAUN, which is again a Society meant for members whereas a Bank discharges public function inasmuch as it is an agency to give effect to the policies of the Government so as to grant agriculture loan to the farmers for their agricultural activities. Since such functions are public functions, therefore, such Cooperative Society is a ‘State’ within the meaning of Article 12 of the Constitution of India and, thus, the writ application would be maintainable. Since such questions were not raised before the Special Bench, therefore, the judgment of the Special Bench would not be applicable to the facts of the present case. Reliance is placed upon a Supreme Court order reported in (2006) 11 SCC 634 (S.S. Rana Vs. Registrar, Co-



operative Societies) and a Division Bench Judgment of this Court in L.P.A. No.921 of 2016 (Chandra Kishore Kumar Vs. The State of Bihar & Ors.), decided on 15.11.2016.

7. We do not find any merit in the argument raised by the learned counsel for the petitioner. The Special Bench in The Organizer, Dehri C.D. & C.M.'s case (supra) has discussed the judgment in S.S. Rana's case (supra) as well as scores of other cases, including that of Pradeep Kumar Biswas and Ors. Vs. Indian Institute of Chemical Biology and Ors, reported in (2002) 5 SCC 111, and held that writ application is not maintainable against a cooperative society.

8. The argument that the Cooperative Societies which were subject-matter of discussion in Special Bench were the private Cooperative Societies and not a public Cooperative Society, such as the respondent Bank, is not a distinction which will lead us to take a view that the respondent Bank is a 'State'. Since the specific issue considered by the Special Bench was that since a Cooperative Society registered under the Bihar Cooperative Societies Act, 1951 is 'State' or not, and the said question having been answered in negative, another argument which could be available would not be a ground to doubt the correctness of the Larger Bench Judgment.

9. The argument that the respondent cooperative



society discharges public functions inasmuch as it advances loans to the farmers or is an instrument to implement the policies of the Central or State Government, therefore, it is 'State' is again not tenable. The activities undertaken by the society are not such which cannot be carried out by any other authority or institution. It is only when an institution carries out an activity which is, in turn, a function assigned to the Central or State Government, such institution may take the colour of a 'State', but advancing loans to the farmers is not an activity which has any exclusivity attached to it. It cannot be treated to be a public duty raising the society to the status of a 'State'.

10. Para 27 of the judgment in A.R. Antulay's case (supra) is an argument raised by the parties. It has been held that any error in the order can be corrected even if a curative petition is to be filed, but the said remedy is only in respect of an order passed by the Supreme Court, being a final Court. This Court in Special Bench has taken a view that a cooperative society, registered under the Bihar Registered Cooperative Societies Act, 1935 is not a 'State'. We are bound by the order passed by the Larger Bench and, thus, we cannot take a different view than what has been taken by the Larger Bench.

11. In Chandra Kishore Kumar's case (supra), the Division Bench was seized of a matter as to whether the appellant is



not a public servant, as defined under Section-2(c) (ix) of the Prevention of Corruption Act, 1988. It was in view of the definition of the said Clause, it was held that the appellant is a public servant. It does not deal with an issue whether a Cooperative Society, established under the State Cooperative Laws, is a ‘State’ within the meaning of Article 12 of the Constitution of India.

12. In view of the above, we find that the writ application against the Cooperative Society is not maintainable.

13. Consequently, the writ application is dismissed. It shall be open to the petitioner to avail such other remedy as is available to him in accordance with law.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

K.C.jha/-

AFR/NAFR	AFR
CAV DATE	N/A
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