

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2513 of 2017

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Raj Bansh Singh son of Late Dukhan Prasad Singh retired Assistant Co-operative Extension Officer, Bihar State Schedule, Caste Co-operative Development Corporation Ltd, presently residing at Mohalla : Niti Bagh, Lohia Path, Near Jagdev Path, P.O. : B.V. College, P.S. : Rupaspur, District : Patna.

.... Petitioner/s

Versus

1. The Bihar State Scheduled Caste Cooperative Development Corporation Ltd. Malayanil Bhawan, Buddha Colony, Patna.
2. The Managing Director, the Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna.
3. The Secretary, the Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna.
4. The Chief Executive Officer, The Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Sinha with Mr. Kumar Ravish, Advocates
For the Respondents No. 2 to 4	:	Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 01-12-2017

Heard learned counsel for the petitioner and respondents.

2. At the very outset, learned counsel for the respondents submitted that there is a Co-operative Society having an elected Managing Committee. It was submitted that in such view of the matter, relying upon the decision of a Special Bench of this Court in the case of **The Organizer, Dehri C.D. & C.M. Union Ltd. vs. State of Bihar** reported as **2014 (1) PLJR 695**, the present writ petition,



under Article 226 of the Constitution of India, is not maintainable.

3. Learned counsel for the petitioner tried to distinguish the present case from that of **The Organizer, Dehri** (supra) by referring to the discussion made in the judgment where certain tests for determining whether a body is 'State' under Article 12 of the Constitution of India has been made. Attempt was to persuade the Court to test the respondents in the light of such parameters, as has been discussed in the judgment, especially at paragraph no. 47 thereof for the purposes of deciding as to whether the writ petitioner under Article 226 of the Constitution of India would lie.

4. Having considered the matter, the Court finds substance in the objection raised by learned counsel for the respondents. The contention of learned counsel for the petitioner is that the parameters laid down by the Court in paragraph no. 47 of the judgment may be applicable in a case where the nature of the body may still be in the grey area without there being any authoritative pronouncement. Only for such purpose, there has been a discussion in the judgment as to the tests which may be applied for determining whether an authority or a person would become a 'State' within the meaning of Article 12 of the Constitution of India. Further, the discussion at paragraph no. 47 itself indicates that the same is not exhaustive. Once ultimately the reference has been answered by the



Special Bench in the following terms:

“67. That being so, I would answer the reference in the following terms:-

(i) Even though the nature of a private Co-operative, which is otherwise not State within meaning of Article 12 of the Constitution, it does not change by appointment of a Special Officer or an Administrator making Co-operative a “State” within the meaning of Article 12, but the very fact of appointment of Special officer or Administrator in terms of Sections 41 (1), 41(2), 41 (3) or Section 41 (5) makes the Special Officer/Administrator an “authority” under Article 12 of the Constitution, thus, amenable to writ jurisdiction and his action has to be consistent with Part-III Rights of the Constitution being a statutory authority. If such officer is a Government servant then he is “State” per se.

*(ii) The Division Bench judgment of this Court in case of **Nand Kishore Rai** (supra) and the Full Bench judgment of this Court in case of **Rajendra Prasad Sah** (supra) are correct and do not require reconsideration.”*

this Court would not go into the discussions in the judgment to take a view, which ultimately results in a situation where this Court would be holding contrary to what has been held by the Special Bench. A Co-operative Society having been held not to be



‘State’ under Article 12 of the Constitution till the time there is a Special Officer or Administrator appointed by the State Government and the present not being a case where the respondent no. 1 is functioning under the Special Officer or Administrator, the Court finds that the writ petition cannot be entertained on the ground of maintainability. Accordingly, the same stands dismissed.

5. However, the petitioner shall be at liberty to move before the appropriate forum in accordance with law with regard to his grievances raised in the present writ petition which shall be decided on its own merits without being prejudiced by the present order. It is expected that upon moving before the appropriate forum, the matter shall be heard on merits and disposed off expeditiously.

(Ahsanuddin Amanullah, J)

Anjani/-

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