

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19114 of 2017

- =====
1. Ved Prakash son of Late Munnu Ram resident of village - Murli Hill, Telbigha, P.O. R.S. Gaya, P.S. Kotwali, District Gaya.
 2. Sri Dasrath Prasad Paswan son of Late Devraj Paswan resident of Mohalla - New Colony, Bageshwari, P.O., R.S., P.S. - Delha, District Gaya.
 3. Sri Anand Kumar son of Late Munnu Ram resident of village - Murli Hill, Telbigha, P.O. R.S. Gaya, P.S. Kotwali, District Gaya.
 4. Yogendra Ravidas son of Late Lalu Ravidas resident of Mohammadpur, P.O. & P.S. Aungouri, District Nalanda.
 5. Sri Ranjit Kumar son of (Late) Shakti Kumar resident of village - Makhdumabad, P.O. & P.S. Jehanabad, District - Jehanabad.
 6. Sri Ramesh Prasad son of Late Janki Ram resident of village Takya, P.S. - Sasaram, District - Rohtas (Sasaram).
 7. Suresh Prasad Ajad son of Late Kamla Prasad resident of village Chhotaki Kalyanpur, P.S. Udwananagar, District - Bhojpur.
 8. Sri Ajay Kumar son of Late Changu Lal resident of village - Garikhana, P.S. Khagaul, District - Patna.
 9. Sri Harendra Kumar Singh son of Late Sri Ajneshwar Prasad Singh resident of village + P.O. Kanangaon, P.S. - Chandi, District - Bhojpur (Arrah).
 10. Sri Vijay Kr. Paswan son of Late Ram Vilash Paswan resident of village - Rasalpur, P.O. Fatuha, District - Patna.
 11. Sri Vijay Kr. Sinha son of Late Parmeshwar Shahni village Lakshmipur, P.O. & P.S. Turki, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Scheduled Castes and Scheduled Tribes Welfare Department, Government of Bihar, Patna.
2. Chairman, Bihar State Scheduled Castes Cooperative Development Corporation Limited, Officers Hostel, Block A, Flat No. 212, Bailey Road, Patna - 800001.
3. Managing Director, Bihar State Scheduled Castes Cooperative Development Corporation Ltd., Officers Hostel, Block - A, Flat 212, Bailey Road, Patna (800001).

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mukul Sinha
Mr. Rajesh Kumar

For the Respondent Nos. 2 & 3: Mr. Ranjeet Kumar Pandey

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 08-05-2018

The learned counsel for the respondents has referred



to the judgment dated 1.2.2017 passed in CWJC No.2513 of 2017 to contend that the present writ petition is not maintainable as against the respondent Corporation. It would be relevant to reproduce paragraph-2 and 4 of the said judgment herein below:-

“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.

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.”

In view of the aforesaid, the learned counsel for the petitioner seeks to withdraw the present writ petition with liberty to move 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.

In case the petitioner moves the appropriate forum within a period of three weeks from today, the case of the petitioner shall be heard on merits and disposed of within a period of six months thereafter.

The present writ petition is disposed of as withdrawn with the aforesaid liberty.

(Mohit Kumar Shah, J)

BTiwary/-

U			
---	--	--	--

