

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.297 of 2015
IN
Civil Writ Jurisdiction Case No. 2491 of 2006

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1. The Bihar State Co-operative Land Development Bank Ltd. Budh Marg, Patna -
1 through its Managing Director.
2. The Managing Director, Bihar State Cooperative Land Development Bank Ltd.
Budh Marg, Patna.
3. The Chairman, Bihar State Cooperative Land Development Bank Ltd. Budh
Marg, Patna.
4. The Secretary, Bihar State Cooperative Land Development Bank Ltd. Budh
Marg, Patna.
5. The Director, Personnel, Bihar State Cooperative Land Development Bank Ltd.
Budh Marg, Patna. Appellant/s

Versus

1. Vansh Narayan Sharma son of late Taluk Raj Thakur resident of village -
Kumhari, P.S. Kurhani, District Kaimur.
2. Dilip Kumar Singh son of late Rajendra Singh resident of village Krishnapur
(Ward No. 3), P.O. & P.S. - Hilsa, District - Nalanda.
3. Shatrughan Singh son of Sri Kamla Singh resident of Village Chainpur, P.S.
Mashrakh, District Saran.
4. Surendra Singh son of Sri Parasnath Singh resident of Village Mashrakh, P.S.
Mashrakh, District Saran.
5. Shyam Singh son of late Lakshman Singh resident of village Krishnapur (Ward
No. 3), P.O. & P.S. - Hilsa, District - Nalanda.
6. Kul Bhushan Tripathi son of Sri Rangnath Tripathi resident of village and P.O.
and P.S. Bilauti, District Bhojpur (Ara).
7. Bijay Singh son of Sri Rajendra Singh resident of villae Rawaich, P.S.
Bakhtiarpur, District - Patna.
8. Prakash Mahto son of late Meghu Mahto resident of village and P.O. and P.S.
Naugachia, District-Bhagalpur.
9. The State of Bihar.
10. The Co-operative Registrar, Bihar State Co-operative Department, Government
of Bihar, New Secretariat, Patna.
11. The Co-operative Commissioner, Bihar State Co-operative Department,
Government of Bihar, New Secretariat, Patna. Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V.Giri, Senior Advocate
with Mr. Rajesh Prasad Choudhary, Adv.
For the Respondent/s : Mr. Kumar Alok, Advocate
Mr. Ajay Kumar Sharma, A.C. to A.G

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**



Date: 31-01-2018

In exercise of jurisdiction under Article 226 of the Constitution of India, a learned Single Judge of this Court by the order under appeal has allowed a writ application filed on behalf of the respondents herein. Learned Single Judge has directed the Managing Director, Bihar State Cooperative Land Development Bank Ltd. Patna to take a fresh decision with respect of regularization/absorption of services of the petitioners in accordance with the settled principles of law and in view of the discussions made in the said judgment and order.

2. This is not in dispute that the said Bihar State Cooperative Land Development Bank (hereinafter referred to as 'the Bank') is a Cooperative society. The question as to whether the said Bank is a State within the meaning of Article 12 of the Constitution of India and, therefore, amenable to writ jurisdiction was not raised on behalf of either of the parties before the learned Single Judge.

3. In view of the recent Five Judge Special Bench decision of this Court reported in *2014(1) PLJR 695(The Organizer, Dehri C.D.& C.M. Union Limited vs. The State of Bihar & Ors.)* their remains no scope of doubt that the Bank is not a State within the meaning of Article 12 of the Constitution of India. The Special Bench while laying down the law in respect of Cooperative societies has affirmed the view of Full Bench decision of this Court reported in



1988 PLJR 1065 (Nand Kishore Rai and others Vs. the State of Bihar and others).

4. The judgment and order of the learned Single Judge dated 25.6.2012 passed in C.W.J.C. No. 2491 of 2006 is being assailed in the present intra Court appeal on various grounds.

5. We have heard Mr. Y.V. Giri, learned Senior counsel appearing for the appellant-Bank and Mr. Kumar Alok learned counsel representing the private respondents.

6. Mr. Y.V. Giri learned Senior counsel appearing on behalf of the appellants has at the very out set submitted that though the question of maintainability of the writ application was not specifically raised before the learned Single Judge, he contends that a question of law which goes to the root of the matter can be raised at any stage. He has placed reliance on the Special Bench decision of this Court in the case of ***The Organizer, Dehri C.D.& C.M. Union Limited*** (supra) to submit that the writ application could not have been entertained.

7. Mr. Kumar Alok learned counsel appearing for the private respondents on the other hand contends that in view of the pervasive control which the State Government of Bihar exercises over the Bank in question, it cannot be said that the Bank is not a State within the meaning of Article, 12 of the Constitution of India. He has referred to the facts which have been noted in the impugned judgment and order of the learned Single Judge to submit that the fact that the writ



petitioners/respondents were discriminated against, is manifest.

8. However, after having examined the Special Bench decision of this Court in case of *the Organizer, Dehri C.D.& C.M. Union Limited* (supra), in our view Mr. Y.V. Giri learned Senior counsel is correct in his submission that the Bihar State Cooperative Land Development Bank cannot be said to be State within the meaning of Article, 12 of the Constitution of India. As per the majority view of the Special Bench decision, no writ can lie against a cooperative society in the given facts and circumstances of the case.

9. Mr. Y.V. Giri, learned Senior counsel is also correct in his submission that the question as to whether the Bank is State or not goes to the root of the matter and this aspect involves pure question of law which can be raised at any appropriate state.

10. In that view of the matter, we do not have any hesitation to hold that the writ application itself was not maintainable. The law that a cooperative society is not a State within the meaning of Article 12 has held the field right from the Full Bench decision of this Court in the case of *Nand Kishore Rai and others* (supra).

11. In that view of the matter, the impugned judgment and order of the learned Single Judge requires interference. The judgment and order dated 25.06.2012 passed in C.W.J.C. No. 2491 of 2006 by learned Single Judge is hereby set aside.

The respondents shall, however, have the liberty to approach



the Registrar of the Central Cooperative Society under the Multi State Cooperative Society Act, 2002 or any other appropriate forum as is permissible to them in accordance with law for redressal of their grievances.

12. We make it clear that we have not gone into the merits of the claim of the respondents of their regularization/absorption and it will be open to them to raise all such issues before appropriate forum in accordance with law.

13. Mr. Kumar Alok submits that the respondents should have the liberty to apply against vacancies if they are advertised in future. It goes without saying that the respondents shall have such liberty and it will be open to the appellant-Bank to consider their cases taking into account the passed service rendered by the said respondents.

14. This Appeal accordingly stands allowed. The parties shall bear their own costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Bibhash

AFR/NAFR	A.F.R
CAV DATE	NA
Uploading Date	21.02.2018
Transmission Date	NA

