

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7068 of 2015

- =====
1. Rama Thakur, son of Late Ganga Vishnu Thakur, resident of Village- Murla, PO- Murla, Police Station- Ramgarhwa, District- East Champaran, at present Chairman of Ramgarhwa Vyapar Mandal Sahyog Samiti Limited having its office at Ramgrhwa, PS- Ramgarhwa, District- East Champaran.
 2. Ramgarhwa Vyapar Mandal Sahyog Samiti Limited having its office at Ramgarhwa, PS- Ramgarhwa, District- East Champaran through its Chairman (Petitioner no.1).

.... Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Agriculture (Department of Agriculture & Cooperation), Krishi Bhawan, New Delhi-110 001.
 2. The Central Registrar, Co-operative Societies, Department of Cooperation, Krishi Bhawan, New Delhi-110001.
 3. The Director, Cooperation, Ministry of Agriculture (Department of Agriculture & Cooperation), Krishi Bhawan, New Delhi-110 001.
- Respondent 1st Party.
4. The State of Bihar through the Secretary, Department of Co-operative, Government of Bihar, Patna.
 5. The Bihar State Co-operative Marketing Union Limited (BISCOMAUN), West Gandhi Maidan, Patna through its Managing Director.
-Respondent 2nd Party.
6. The State of Jharkhand at Ranchi through the Secretary, Department of Cooperative, Government of Jharkhand, Ranchi.
 7. The Registrar, Co-operative Societies, Government of Jharkhand, Ranchi.

.... Respondent 3rd Party

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Adv. Mr. Bindhyachal Rai, Adv.
For the Respondent-State	:	Mr. Anshuman Singh, AC to AG
For the Respondent-UOI	:	Mr. S.D. Sanjay, Addl. S.G. Mr. Anshuman Singh, CGC
For the BISCOMAUN	:	Mr. Y.V. Giri, Sr. Adv. with Mr. Ashish Giri, Adv.
For the State of Jharkhand	:	Mr. Dhruba Mukherjee, Sr. Adv. Mr. Nasir Ahmad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 18-05-2018



Heard Mr. Yogendra Mishra, learned counsel appearing for the petitioners who appears with Mr. Bindhyachal Rai, the Advocate on record, Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India assisted by Mr. Anshuman Singh, learned Central Government Counsel, Mr. Anshuman Singh, learned Assisting Counsel to the Advocate General for the State of Bihar, Mr. Y.V. Giri, learned senior counsel appearing for the respondent no.5 with Mr. Ashish Giri and Mr. Dhruva Mukherjee, learned senior counsel appearing for the State of Jharkhand.

A cooperative society along with its Chairman have joined together to file this writ petition for the following reliefs:

- (i) An appropriate writ, order or direction declaring the provisions of Section 103 of Multi-State Co-operative Societies Act as illegal, ultra virus and unconstitutional, be issued.
- (ii) An appropriate writ, order or direction declaring the action of the respondent no.2 in registering the BISCOMAUN (Respondent no.5) as Multi-State Cooperative Society vide Annexure '1' as illegal, void, arbitrary and without jurisdiction, be issued.
- (iii) Further, pray for issuance of any other appropriate



writ/writs, order/orders, direction/directions and/or relief/reliefs which the petitioners are entitled to in the facts and circumstances of the case.

While the two petitioners have given no details as regarding the formation of the society, its area of operation etc., a counter affidavit filed on behalf of the respondent no.5 i.e. the Bihar State Co-operative Marketing Union Limited (hereinafter referred to as the 'BISCOMAUN') does indicate that while the petitioner no.2 is a Central Co-operative society registered under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act of 1935') and the Rules framed thereunder, the petitioner no.1 is the Chairman of the society. It is next mentioned at paragraph 7 and not denied that the petitioner-society is not affiliated to the 'BISCOMAUN' which is an Apex Multi-State Cooperative Society having its area of operation in and outside the State of Bihar.

A preliminary objection was raised by Mr. Y.V. Giri, learned senior counsel appearing for the 'BISCOMAUN' along with Mr. Ashish Giri to question the locus of the petitioners to challenge the vires of the provisions of section 103 of the Multi-Sate Co-operative Societies Act, 2002 (hereinafter referred to as the 'Act of 2002') but in my opinion even if the petitioners do not have



any business interest with the respondent no.5, yet it does not debar them to question an enactment on its vires for every citizen of this country is fully entitled to question any enactment framed by the Parliament or the Legislature of the State in accordance with law. I am thus not persuaded to take cognizance of the preliminary objection so raised by Mr. Giri, learned counsel appearing for the 'BISCOMAUN' on the issue of 'locus' for in view of the opinion expressed above, the petitioners are fully within their right to raise such issue.

The second objection raised by Mr. Giri, learned senior counsel appearing for the Respondent no.5 is in reference to the judgment of the Supreme Court reported in **(2007) 6 SCC 236 (Greater Bombay Cooperative Bank Ltd. vs. United Yarn Tex (P) Ltd.)** as according to him, this very issue has been answered by the Supreme Court at paragraph 89 of the judgment when it was held that the Parliament has the power to enact such law under Entry 44 of List I of the Seventh Schedule of the Constitution.

This objection would bring the contest on the merits of the issue.

Mr. Yogendra Mishra has appeared for the petitioners along with Mr. Binchyachal Rai, the Advocate on record and his



arguments to question the vires of section 103 of 'the Act of 2002' basically revolves around the following issues:

- (a) The Parliament does not have legislative competence to enact a law on co-operative as the power is entirely reserved in the State in view of Entry 32 List II of the Seventh Schedule to the Constitution of India which, inter alia, makes co-operative societies, a State subject.
- (b) The second issue raised by Mr. Mishra to question the vires of section 103 of 'the Act of 2002' is that it offends the Ninety-Seventh Constitutional Amendment, 2011, whereby Part IX-B was incorporated in the Constitution of India to cater for the co-operative societies;
- (c) The third issue raised by Mr. Mishra in support of his contention is that section 103 of 'the Act of 2002' also offends other provisions present in the said Act which clearly provides for the mode and manner of formation of Multi State Co-operative Societies and thus there is no justification for a deeming fiction.

Mr. Mishra has invited the attention of the Court to the provisions underlying Article 43-B incorporated vide Constitution (Ninety-Seventh Amendment) Act, 2011 with effect from



15.2.2012 to submit that it is the 'State' who shall endeavour to promote and regulate the function of the co-operative societies.

Learned counsel has next referred to Part IX-B of the Constitution to submit that this Chapter was incorporated vide the Constitution (Ninety-Seventh Amendment) Act, 2011 and whereby the provisions were laid down as regarding the incorporation of the co-operative societies as well of Multi State Co-operative Societies. According to Mr. Mishra, where the incorporation of the two kinds of co-operative societies has been explained under Article 243-ZH (c) and (d) read alongside Article 243-ZI and 243-ZR, there cannot be an incorporation by a deeming fiction. According to Mr. Mishra, where the Parliament has consciously provided for separate provision to cater to the needs of a co-operative society and a Multi State Co-operative Society and where there are specific provisions present under sections 7 and 22 of 'the Act of 2002' for conversion of a State level co-operative society as a Multi State Co-operative Society, the deeming clause present under section 103 of the said Act would offend these specific provisions. He submits that the respondent no.5 was registered as a co-operative society under 'the Act of 1935' having its operation in area, some of which now lie in the State of Jharkhand by virtue of enforcement of Bihar



Reorganization Act, 2000 with effect from 15.11.2000 (hereinafter referred to as 'the Act of 2000'). According to Mr. Mishra even when such transition is answered by 'the Act of 2000' whereby the identity of the co-operative society concerned would remain as a State Level Apex Co-operative Society but this identity is sought to be taken away by deeming fiction created under section 103 of 'the Act of 2002'.

According to Mr. Mishra, a co-operative society is a State subject under Entry 32 of List II of Seventh Schedule to the Constitution and all matters relating to a co-operative society needs to be legislated by State Legislature and not by the Parliament. According to Mr. Mishra, the wresting away of the character of a State level co-operative society by a deeming fiction under section 103 of 'the Act of 2002' is violative of the fundamental right guaranteed under Article 19 (1) (c) of the Constitution of India.

Concluding his argument it is the contention of Mr. Mishra that even if 'the Act of 2002' is constitutionally valid, the provisions of section 103 providing for creation of a Multi State Co-operative Society by a deeming fiction, is ultra-vires the power vested in the Parliament as well as to the provisions underlying section 22 of the said Act.



Mr. S.D. Sanjay, learned Additional Solicitor General who appears with Mr. Anshuman Singh, learned Central Government Counsel for the Union of India has argued in support of the enactment to submit that undoubtedly it is the State Legislature competence to enact law relating to State Level Co-operative Society but the moment the activities of a co-operative society moves outside the State, it transforms into a Multi-State Co-operative Society and in such eventuality, it is the Parliament alone which has the legislative competence to enact any law.

Learned counsel for the State has referred to his counter affidavit to inform that a major share of the co-operative society is held by the State and such conversion would affect the interest of the State. However apart from individual interest, nothing has been advanced by learned State Counsel on the issue of vires of section 103 of 'the Act of 2002'.

The main opposition to the challenge has come from Mr. Giri who has relied upon the opinion of the Supreme Court recorded in the case of **Greater Bombay Co-operative Bank Ltd.** (supra) at paragraph 89 to submit that the issue stands concluded. In reference to Article 43-B of the Constitution, it is the submission of Mr. Giri that the reference made therein is not to the State



Legislature rather the reference is to the 'State' within the meaning of Article 12 of the Constitution of India and which is inclusive of the Parliament. Turning to Part- IX-B incorporated under the Constitution (Ninety-Seventh Amendment) Act, 2011 he submits that the definition of a Multi-State Co-operative Society provided under Article 243 ZH (d) recognizes a Multi State Co-operative Society newly formed or created by a deeming fiction and thus Section 103 of the 'Act of 2002' has a constitutional sanction.

It is submitted that even though Article 243-ZI talks about incorporation of co-operative society but the position as regarding the Multi State Co-operative Society is explained in Article 243-ZR. It is submitted that the moment the activity of a co-operative society extends outside the State to another State, it partakes the character of a Multi-State Co-operative Society and since the area of operation of State Level Society spreads to two States, it is the Parliament alone to regulate its activities.

We have heard learned counsel for the parties and perused the records.

In our opinion, the challenge lacks teeth and the frivolity thereof is confirmed from the fact that the 'Act of 2002' is not a new enactment rather it repeals and replaces the Multi-State Co-



operative Societies Act, 1984 (hereinafter referred to as the 'Act of 1984') having *pari-materia* provisions, which Act in turn repealed a pre Constitutional Act by the name of Multi-unit Co-operative Societies Act, 1942 (hereinafter referred to as the 'Act of 1942'), enacted to facilitate the organization, administration and function of co-operative societies with objects not confined to one State and serving the interest of the members of such society from more than one State. 'The Act of 2002' thus, is not a product of a fresh legislative exercise rather is an improvement on the previous enactment operating in the same field.

It is surprising that Mr. Mishra, learned counsel appearing for the petitioners even after noticing the various amendments incorporated in the Constitution of India under the Ninety-Seventh Amendment, 2011 whereby provisions inter alia, to regulate a cooperative society as well as a Multi-State Co-operative Society were incorporated separately, has chosen to engage this Court in an absolute waste of precious Court hours.

Article 243-ZH (d) incorporated vide Chapter IX-B, defines a Multi-State Co-operative Society to mean 'a society with objects not confined to one State and **registered or deemed to be registered** under any law for the time being in force relating to



such co-operative. Meaning thereby a Multi State Co-operative is a body recognized under the 97th amendment and its incorporation by deeming fiction is answered by the enactments referred to above and presently by 'the Act of 2002'.

Article 43-B has again been incorporated under the same Ninety-Seventh Constitutional Amendment, 2011, whereby the power has been vested in 'the State' to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. While Mr. Mishra, learned counsel appearing for the petitioners proceeded to interpret the term 'the State' in literal sense to mean a 'State Legislature', the answer is found in Article 12 which defines 'the State' to mean the Government, both Central and State, the Parliament, the Legislature of a State and all local authorities within the territory of India. In my opinion, the provisions underlying Article 43-B and Article 243-ZH (d) read alongside Article 243-ZI and Article 243-ZR is a complete answer to the challenge posed herein.

Much reliance has been placed by Mr. Mishra on Entry 32 of List-II of the Seventh Schedule to the Constitution of India to question the power of the Parliament to create a Multi-State Co-



operative Society by deeming fiction under section 103 of the ‘Act of 2002’ but paragraph 89 of the judgment of the Supreme Court in the case of **Greater Bombay Cooperative Bank Limited** (supra) relied upon by Mr. Giri puts at rest even the said objection.

For the sake of convenience, we deem it proper to reproduce the relevant extract of the judgment which at paragraph 89 reads thus:

“89. In *R.C. Cooper vs. Union of India*⁴ this Court observed that power to legislate for setting up corporations to carry on banking and other business and to acquire, hold and dispose of property and to provide for administration of the corporation is conferred upon Parliament by Entries 43, 44 and 45 of the Constitution. Therefore, the express exclusion of cooperative societies in Entry 43 of List I and the express inclusion of cooperative societies in Entry 32 of List II separately and apart from but along with corporations other than those specified in List I and universities, clearly indicated that the constitutional scheme was designed to treat cooperative societies as institutions distinct from corporations. Cooperative societies, incorporation, regulation and winding up are State subjects in the ambit of Entry 32 of List II of the Seventh Schedule to the Constitution of India. Cooperatives form a specie of genus “corporation” and as such cooperative societies with objects not confined to one State are read in with the Union List as provided in Entry 44 of List I of the Seventh Schedule of the Constitution; the MSCS Act, 2002 governs such multi-State cooperatives.”

(Emphasis is supplied)

A somewhat similar situation had arisen in a case of a State level cooperative society by virtue of creation of State of



Uttaranchal under the U.P. State Reorganization Act, 2000 and when identical issue of creation of a Multi-State Co-operative Society by a deeming fiction fell for consideration before the Supreme Court in the case reported in **AIR 2009 SC 2450 (Naresh Shankar Srivastava Vs. State of U.P.)**. In the said case it was by virtue of the U.P. Reorganization Act, 2000 that the functions of the U.P. Co-operative Processing and Cold Storage Federation Limited ('PACSFED' for the sake of brevity) got spread over to the State of Uttaranchal now known as 'Uttarakhand'. In view of the provisions underlying section 95 of the 'Act of 1984' which is *pari-materia* to section 103 of 'the Act of 2002', the co-operative became a Multi-State Co-operative Society by deeming fiction but by the enforcement of the Uttaranchal State Co-operative Act, 2003, it was sought to be canvassed that the co-operative society in question, had reverted back to a State Level Co-operative Society. The matter was considered by the Supreme Court and vide opinion expressed at paragraph 24 of the judgment it was held that the conversion of the State Level Co-operative Society into a Multi-State Co-operative Society by virtue of section 95 of the 'Act of 1984' was an irreversible process and by virtue of the State Co-operative Societies Act, 2003, it could not automatically revert to assume a



character of a State cooperative society. It was held that the Act did not permit any such automatic conversion by operation of law.

A challenge to a legislative instrument can primarily be raised on two grounds, namely:

- (a) Lack of legislative competence; and
- (b) Violation of fundamental rights guaranteed under Part-III of the Constitution.

In our opinion, while the conversion of a State Level Co-operative Society into a Multi-State Level Co-operative Society by operation of law does not infringe any right of the member much less a fundamental right save and except that the regulatory power shifts from the State level to the Central level, even on the issue of legislative competence in view of the opinion expressed by the Supreme Court at paragraph 89 of the judgment in the case of **Greater Bombay Cooperative Bank Limited** (supra) which was at a stage when the Constitution (Ninety-Seventh Amendment) was yet to take place, the challenge is bound to fail.

In our opinion, apart from the provisions underlying Entry 44 List 1 of the Seventh Schedule which empowers the Parliament to enact law in respect of corporations, with objects, not confined to one State, even the residuary power vested under Entry 97 of List I



amply empowers the Parliament to enact law in relation to Multi-State Co-operative Societies, in absence of any specific entry to such effect in List-I or List-III.

For the reasons so discussed, we find the challenge utterly frivolous, lacking in substance and a waste of precious hours.

The writ petition is accordingly dismissed but with no order as to costs.

I Agree
Chakradhari Sharan Singh, J.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

SKPathak/-

AFR/NAFR	AFR
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