

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1544 of 2014

In
Civil Writ Jurisdiction Case No.23268 of 2013

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Co-operative Department, Government of Bihar, Patna
 3. The Registrar, Co-operative Societies, Government of Bihar, Patna

... .. Appellant/s

Versus

1. Board of Directors of Bihar State Co-operative Marketing Union Ltd. (BISCOMAUN), West- Gandhi Maidan, through its Chairman, Sunil Kumar Singh S/O Sri Mahendra Pratap Singh, R/O- 301, Kanti Place, Shashtri Nagar, P.S. Shashtri Nagar, Town & District- Patna
2. The Government of India through its Secretary, Ministry of Agriculture (Department of Agriculture and Co -Operation), Krishi Bhawan, New Delhi - 110001
3. The Central Registrar, Co -Operative Societies, Department of Co - Operation, Krishi Bhawan, New Delhi - 110001
4. Director (Co - Operation), Department of Agriculture and Co-operation, Ministry of Agriculture, Krishi Bhawan, New Delhi - 110001.
5. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Ranchi
6. The Principal Secretary, Co-operative Department, Government of Jharkhand, Ranchi
7. The Registrar, Co-operative Societies, Jharkhand, Ranchi
8. Vijaipur Vyapar Mandal Sahyog Samiti Limited having its office at Vijaipur P.S- Vijaipur, District-Gopalganj, through its Chairman, Sri Vinay Kumar Sahi, Son of Late Bachcha Prasad Sahi, resident of Ahiyapur Police Station Vijaipur District-Gopalganj

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.S.D.Yadav, AAG-9 Mr. Shambhu Nath,AC to AAG-9
For the Respondent No.1:	:	Mr. Y.V.Giri, Sr. Advocate with Mr. Ashish Giri, Advocate
For Respondents 2 & 3	:	Ms. Nivedita Nrivikar, Advocate
For Respondents 5 to 7	:	Mr. N.N.Ojha, Advocate
For Intervener	:	Mr. Vindyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-05-2018

Heard Mr. S.D.Yadav, learned Additional Advocate General-9, for the appellants, Mr. Y.V.Giri, learned Senior Counsel appearing on behalf of Respondent No.1 along with Mr. Ashish Giri, Advocate on record, Ms. Nivedita Nirvikar, learned Central Government Counsel for the respondent Nos. 2 and 3, Mr. N.N. Ojha, learned counsel representing respondent Nos. 5 to 7 and Mr. Vindhyachal Rai, learned counsel for the intervener appearing in I.A. No. 2430 of 2015.

This appeal filed under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from a judgment and order of a learned Single Judge of this Court dated 02.07.2014, passed in CWJC No. 23268 of 2013, whereby the writ petition was allowed and the order of the Central Registrar, Co-operative Society, Department of Co-operative, Government of India, New Delhi, dated 21.04.2011 in rejecting the representation of the petitioner for registration under the Multi-State Co-operative Societies Act 2002 (hereinafter referred to as 'the Act of 2002'), has been set aside.

The facts of the case as noted from the writ petition found necessary for disposal of this appeal briefly stated is that the respondent no. 1, herein is the Board of Directors of the



Bihar State Co-operative Marketing Union Limited, Patna ('BISCOMAUN' for the sake of brevity), is an apex Co-operative Society registered under the Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act of 1935') and conducts its business in accordance with the provisions of the said Act, the Rules framed thereunder as well as its own registered Bye-Laws. The headquarter of the Society is situated at Patna and it is feeling aggrieved by the order of rejection passed by the Central Registrar that the Chairman of the Society on being authorized by the Board of Directors, had approached this Court through the writ petition, in question, seeking a writ in the nature of mandamus for declaring the society as a Multi-State Co-operative Society by operation of law under the provisions of Section 103 of 'the Act of 2002'.

Even though the respondent-petitioners enclosed the order of the Central Registrar whereby their prayer for a similar declaration and consequential registration was rejected vide order dated 21.04.2011, an amendment to such effect and for questioning the said rejection, came later through I.A. No. 2447 of 2014, which was allowed.

An Interlocutory Application bearing No. 8714 of 2013 was filed to implead the concerned authorities of the State



of Bihar as well as the State of Jharkhand as respondent nos. 4 to 9, which was also allowed, although the memo of parties as reflected in the judgment impugned does not correctly show this position.

The Cooperative Society, in question, was registered in the year 1950 bearing Registration No. 12P of 1950. It is undisputed that it was being regulated under 'the Act of 1935' since the area of the operation of the Society was the whole State of Bihar including those which presently fall in the State of Jharkhand after the reorganization of the State of Bihar under the Bihar Reorganization Act 2000, which was made effective from 15.11.2000.

It is by virtue of this reorganization that there came a transition in the Society from a State Level Society into a Multi-State Co-operative Society as per the provisions of the Multi-State Co-operative Societies Act 1984, which got repealed and replaced by the 'Act of 2002' having *pari materia* provisions. As according to the petitioners, by virtue of the provisions of Section 103 of 'the Act of 2002' and in view of the undisputed situation where the business activities of the Co-operative Society lay across to the State of Jharkhand, the society had partaken the character of a Multi-State Co-operative



Society and by deeming fiction on operation of law it is for such declaration that the Society, through its Board of Directors, approached the Delhi High Court in Writ Petition (Civil) No. 2080 of 2011. The writ petition was disposed of vide order passed on 28.03.2011, with a direction to the Central Registrar to pass appropriate order on the representation so filed by the petitioner Society pending before the Central Registrar. A copy of the order passed by the Division Bench of Delhi High Court in Writ Petition (Civil) No. 2080 of 2001, is enclosed at Annexure-1 to the writ petition. The representation was rejected by the Central Registrar on 20.04.2011, vide Annexure-2 to the writ petition, and it is feeling aggrieved that they approached the Writ Court through the writ petition in question, which has been allowed and hence this appeal.

Mr. S. D. Yadav, learned Additional Advocate General-9, has primarily questioned the judgment and order of the Writ Court on three grounds namely;

(a) the Board of Directors have no locus to file the writ petition inasmuch as the power lies in the Managing Director;

(b) Even though the State held more than 70 per cent share in the Society, yet no permission was taken by the



Board of Directors from the State Government to file the writ petition; and

(c) Section 11(4) r/w the provisions of Section 22 and Section 103 of the Act of 2002 supports the action of the Central Registrar to reject the registration inasmuch as without amendment in the Bye-Laws that a prayer to such effect was made.

The arguments have been contested by Mr. Giri, learned Senior Counsel representing the Society, the respondent no. 1, to submit that the issue of creation of a Multi-State Cooperative Society by operation of law under Section 103 of 'the Act of 2002' is no more *res integra* rather it is in ignorance of the legal position settled under a catena of the judgment that the present appeal is filed. Mr. Giri in support of such submission has relied upon the following judgments:-

- “1. 2003(2) BLJR 1467 (The Bihar State Cooperative Milk Producers Federation Ltd Vs. State of Jharkhand & ors,
2. Civil Appeal No.(s) 4145 of 2007 (State of Jharkhand & ors. Vs. Bihar State Coop. Milk Prod. Fed. Ltd).
3. (2009) 16 SCC 157 (Naresh Shankar



Srivastava V. State of Uttar Pradesh and others).

4. 2012(3) PLJR 873 (The Bihar Rajya Sahkari Bhhumi Vikas Bank Vs. State of Bihar and Ors.).

5. Writ Petition No. 8189 (MB) of 2012 (Ram Krishan Pokhariyal and another Vs. Union of India and others).”

Responding to the objection on the issue of *locus standi*, learned Counsel has invited attention of this Court to the Bye-Laws of the Society as was in existence at the stage of filing of this writ petition, a copy of which is enclosed at Annexure 3/1 with the supplementary affidavit filed on 09.12.2013, and in reference to Clause 41(c)(1) and (7) (9) of the Bye-Laws it is submitted that the Board is amply empowered to take any decision to protect the interest and to espouse the cause of the Society. It is the submission of Mr. Giri that neither on merits nor on objection of locus is the appeal capable of withstanding, the scrutiny as also discussed in the judgment and order of the learned Single Judge which answers each of the issue succinctly and requires no interference.



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

Certain undisputed facts though discussed, needs to be reiterated:

(a) The Society in question is an apex Co-operative Society and its operational area spreads across to such area which now falls in the State of Jharkhand.

(b) As until 15.11.2000 when the Bihar Reorganization Act 2000 came into force for bifurcation of the State of Bihar, to create a State of Jharkhand, the Society was being regulated under the act of State legislature namely the Bihar Co-operative Societies Act 1935 and the Rules framed thereunder as well as its own Bye-Laws;

(c) As a consequence of bifurcation of the State of Jharkhand, an issue arose, as to the status of the Co-operative Society in the light of the provisions underlying Section 95 of the 'Act of 1984', which was repealed and replaced by *pari materia* provisions underlying Section 103 of the 'Act of 2002' which reads as under:

**“103. Cooperative societies
functioning immediately before
reorganization of state:-**



(1) Where, by virtue of the provisions of Part II of the State Reorganization Act, 1956 (37 of 1956) or any other enactment relating to reorganization of states, any cooperative society which immediately before the day on which the reorganization takes place, had its objects confined to one state becomes, as from that day, a multi-State cooperative society, it shall be deemed to be a multi-State cooperative society registered under the corresponding provisions of this Act and the bye-laws or such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.”

(d) The representation of the petitioners for its declaration as a Multi-State Co-operative Society under the ‘Act of 2002’ by virtue of the developments discussed and in the light of the Bihar Reorganization Act 2000, was rejected by order



dated 21.04.2011 of the Central Registrar, impugned at Annexure-2, in purported disposal under the orders of the Delhi High Court passed in W.P. (Civil) No. 2080 of 2011;

(e) The writ petition of the respondent no. 1, was allowed by the judgment and order impugned passed on 02.07.2014 and following which, a certificate of registration has been issued by the Central Registrar on 01.08.2014, a copy of which is enclosed at Annexure-A to the counter affidavit filed in I.A. No. 2467 of 2014 on behalf of the respondents-writ petitioner at running page 64 of the present proceeding;

(f) The certificate of registration is absolute and not conditional,

(g) It is not the Central Registrar who is aggrieved by the order on the writ Court to prefer any Intra Court appeal nor has he made the registration conditional, rather it is the State, who stands up to oppose the order of the writ Court; and

(h) By issuance of Central registration, the challenge to the order of the writ Court is rendered academic because it has been issued unconditionally.

It is taking note of the undisputed facts noted above, that we would first like to take up the issue of locus raised by the appellant-State.



We find that the State after informing that about 77 percent of the total paid share capital in the society, was that of the State, has raised objection on the maintainability of the writ petition, because according to them the Board of Directors, is not authorized to initiate such challenge under the 'Act of 1935', the Rules framed there under or the Bye Laws, which power lies with the Managing Director. The learned Single Judge has very elaborately discussed the frivolity of this objection as also to the right of the Board of Directors to maintain the writ petition. Even otherwise, the Board of Directors of the Society is a Supreme body statutorily responsible to take policy decision in the best interest of the Society. The Board of Directors can neither be held an interloper nor can be called a busy body lacking in interest to raise such cause. Considering the objection from any view point, save & except, that the State is hyper sensitive because of its shareholding in the Society, we find no other reason for any such objection more particularly in view of the clear stipulation present at Clause 41(c)(9) of the Bye-Laws which clearly empowers the Board of Directors for the conduct of the affairs of the Society as well as to take all necessary decision to fulfill the aims and object for which the society was incorporated.



We are also persuaded to take note of the legal provision underlying Section 14(3) of the 'Act of 1935' which needs to be considered alongside Section 2(e) which defines 'the Board' to mean 'the General Body', Board of Directors, or the Managing Committee of the society, entrusted with the responsibility of the management of the society. The Managing Director under Section 14(3) is recognized as the Chief Executive of the Society but his action are subject to the general direction and control of the Managing Committee i.e. the Board of Directors, for exercising powers enumerated thereunder which at Clause (x) empowers him to institute legal proceeding for and on behalf of the Society.

Where, thus, the legislature has been conscious to regulate the powers exercisable by the Managing Director subject to the general direction and control of the Managing Committee which means the Board of Directors of the Society, in case the Board itself has decided to initiate the contest, no infirmity can be found in the action complained.

While on the subject, we are also persuaded to take note of Part IXB of the Constitution which was incorporated by the 97th Constitutional Amendment Act 2011 more particularly its definition clause present under Article 243 ZH (b). The



Board has been defined to mean the Board of Directors to which, the direction and control of the management of the affairs of the Society is entrusted statutorily.

Having gone through and taking note of the exhaustive discussion made by the learned Single Judge on the issue, we proceed to reject the objection raised by Mr. Yadav to question the locus of the respondent no. 1, to maintain the writ petition.

This would take us to the second issue raised, as to the correctness of the order of the Central Registrar dated 21.04.2011, put to challenge before the Writ Court. In our opinion, by virtue of the issuance of the certificate of Registration by the Central Registrar present at running page 64 of the present proceeding, the issue has become academic because the error earlier committed by the Central Registrar, has been corrected by him in obedience to the order of the learned Single Judge without questioning the same before the superior forum and without making the registration conditional to the present appeal. In fact, taking note of the judgment(s) relied upon by Mr. Giri, we are constrained to observe that the filing of the present appeal is another confirmation of the futility of the State Litigation Policy because even when the issues raised,



remain well settled in the catena of judgments and the deeming fiction created under Section 103 of 'the Act of 2002' which transforms a State Level Co-operative Society into a Multi-State Co-operative Society by operation of law provided the operational area of the society concerned, spreads over more than one State, having being crystallized under these judgments, yet this appeal is filed raising such grounds which are stale and stands answered by the judgments.

For the sake of convenience and to demonstrate the frivolity of the present appeal, we make brief reference to the opinion expressed by the Court(s) in the judgment so relied upon by Mr. Giri.

In the case of **Bihar State Co-operative Milk Produce Federation** (supra) which is a case identical to the case in hand, the issues were settled by the Jharkhand High Court, taking note of provisions underlying Section 95 of 'the Act of 1984', which is *pari materia* to Section 103 of 'the Act of 2002' for upholding the status of the Society as a Multi-State Co-operative Society. The judgment of the Division Bench of Jharkhand High Court was also affirmed by the Supreme Court when the Civil Appeal No. 4145 of 2007 preferred by the State of Jharkhand, was dismissed.



The fiction created under Section 95 of 'the Act of 1984' as replaced by Section 103 of 'the Act of 2002' also came up for consideration in the case of **Naresh Shankar Srivastava** (supra) and paragraph(s) 24,25 and 27 quoted herein below for ready reference, answers the issue:-

“24. A perusal of the abovementioned provisions makes it crystal clear that Section 95 of the Multi-State Act will be squarely applicable to the case in hand. This provision addresses a situation like the present one. It provides that where the object of the cooperative society is confined to one State, would become from the date of reorganisation of the State, a multi-State cooperative society by virtue of Part II of the States Reorganisation Act and then it shall be deemed to be multi-State cooperative society and the bye-laws of such society shall continue to be in force until altered.

25. It is to be kept in mind that Section 95 of the Multi-State Act has been incorporated to meet a particular situation. The said section provides that it would be operative as a consequence of reorganisation of States and particularly when any area or portion of area of the society is bifurcated or divided and then fell



in the jurisdiction of two State administrations. The idea is to obviate the administrative stalemate arising out of creation of a new State and new administration. This section is independent of all other sections of the Act.

27. As noted earlier, Section 95 of the Multi-State Act takes care of a situation arising out of reorganisation of States of certain class of cooperative societies. Indeed, the very rationale or legal justification of having such a provision in the statute book is to provide continuity to those cooperative societies, the objects of which were confined to one State immediately before the day on which the reorganisation takes place but as from the day of the reorganisation of the State its object extends to more than one State, by declaring that such cooperative societies shall be deemed to be multi-State cooperative societies, registered under the corresponding provisions of the multi-State Act. The very purpose of having this kind of provision is to stop the applicability of a State Cooperative Societies Act over more than one State as a State Act cannot have extraterritorial operation and the multi-State cooperative societies cannot be regulated by a State Cooperative Societies Act.”



The issue again came up for consideration in the case of **Bihar Rajya Sahkari Bhumi Vikas Bank Simit Vs. State of Bihar** reported in **2012 (3) PLJR 873** and the Division Bench of this Court vide judgment dated 20.07.2011 passed in LPA No. 33 of 2011 held as follows:

“3. LPA No. 33 of 2011 is directed against judgment and order dated 22.11.2010 passed in CWJC No. 17861 of 2010. By that order the writ petition preferred by private respondent of this LPA was disposed of with a direction to the Registrar Co-operative Societies, Bihar, Patna to hear the appeal against the order passed by the Managing Director and the Board of Directors of the bank inflicting punishment of dismissal from service upon the writ petitioner. The challenge is based on the plea that since reorganization of erstwhile State of Bihar into present State of Bihar and State of Jharkhand on 15.11.2000, the area of operation of the appellant bank fell in more than one State and, hence, by virtue of Section 103 of the Multi State Co-operative Societies Act, 2002 (hereinafter referred to as ‘the Act’)



which is similar in effect to provisions in Section 95 of the Multi State Co-operative Societies, Act, 1984, the appellant cooperative bank on account of deeming provision in Section 103 of the Act became a Multi State Co-operative Societies and its bye laws continued to be in force only insofar as they are not in consistent with the provisions of the Act. It has further been submitted that subsequently new bye laws have been enacted and registered.

4. The parties are in agreement that after on account of Section 103 of the Act the appellant bank became a Multi State Co-operative Society, the Registrar, Co-operative Societies, Bihar, Patna shall have no jurisdiction in respect of the appellant bank and the control shall vest in the Central Registrar, Co-operative Societies appointed under sub-section (1) of the Section 4 of the Act.

5. Learned counsel for the appellants has placed reliance upon a judgment of the Apex court in the case of **Naresh Shankar Srivastava vs. State of U.P. and Others**, AIR 2009 SC 2450, in support of their stand. They have further placed reliance upon a Division Bench judgment of this court dated 13.9.2010 passed in LPA No. 1621 of 2010 (**The State**



of Bihar through Commissioner-cum-Secretary, Department of Co-operative, Bihar, Patna vs. Pramod Bihar & Ors). A copy of that judgment has been annexed as Annexure-3 to CWJC No. 4587 of 2011. The Division Bench of this court has relied upon the judgment of the Supreme Court in the case of **Naresh Shankar** (*supra*) which was rendered in the context of Multi State Co-operative Societies Act, 1984. Section 95(1) of the 1984 Act is *pari materia* same as Section 103(1) of the Act and, hence, in our view the issue stands well settled by the aforesaid judgment of the Supreme Court that on account of reorganization of the State a co-operative society like the appellants shall automatically become a Multi State Co-operative Society.”

Learned Counsel for the petitioners has enclosed a judgment delivered by one of us (Jyoti Saran, J.) passed in CWJC No. 16760 of 2012 (**Pragatishil Adarsh Sahakari Grih Nirman Samiti Limited and ors Vs. State of Bihar and Ors**), which was heard analogous with another CWJC No. 1766 of 2015 to state that the issue was deliberated upon in the backdrop of similar circumstances arising in a liquidation proceeding and it is in reference to the provisions underlying Section 103 of ‘the



Act of 2002’ as well as the judgments passed by the Court interpreting the provisions, it was held that the change in the status of the State Level Co-operative Society into a Multi-State Co-operative Society is under deeming fiction by operation of Section 103 of the ‘Act of 2002’. It is informed that the State in its Co-operative Department did not chose to question the judgment passed in the case of **Pragatisheel Adarsh Sahkari Grih Nirman Samiti Ltd**, rather has directed the Managing Director, Bihar Co-operative Federation to implement the judgment through letter bearing no. 1103 dated 07.02.2017.

Having noted the opinion expressed by the Court at regular intervals on the issue so raised and contested herein, we find no reason to have a view different than expressed in the judgments referred to above and relied upon by learned counsel for the respondent-writ petitioners. The opinion expressed by the learned Single Judge put to challenge herein is after taking note of the statutory prescription and the judicial view expressed thereon. We find nothing in this appeal which would persuade us to have a different view.

Mr. Giri, was fair enough to inform that the judgment and order of the learned Single Judge was stayed by the Division Bench while admitting this appeal on 31.03.2015



and which stay order was questioned by the respondent-writ petitioner before the Supreme Court in SLP (Civil) No. 10847 of 2015. He informs that the Special Leave to Appeal was allowed on 09.04.2015 by the Supreme Court on following terms:

“Heard learned counsel for the parties.

Having regard to the nature of the matter and the question of law that arise and having regard to the fact that the SLP is filed against the impugned interim order, though we deem it appropriate to keep the interim order in abeyance, we do not see any purpose in keeping the special leave petition pending. We therefore dispose of the special leave petition and request the High Court to decide the Letter Patent Appeal No. 1544 of 2014 expeditiously preferably within a period of four weeks from today. In the interregnum, the operation of the impugned interim order shall remain suspended. Any decision taken or action of the petitioner’s Society during the pendency of the Letters Patent Appeal shall be subject to the final decision of the High Court.

The special leave petition stands disposed of accordingly.”

Having heard learned Counsel for the parties and in view of the discussions made by us on the issues so raised by Mr. Yadav to question the judgment and order of the learned Single Judge, we are persuaded to observe that neither the issues so raised have statutory support nor the facts accompanying the



appeal lends any support thereto.

The appeal is accordingly dismissed without any order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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