

Gyan Singh Yadav and ors. Vs. the State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-27-2010

Judge : Uma Nath Singh and; Satish Chandra, JJ.

Appellant : Gyan Singh Yadav and ors.

Respondent : The State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Uma Nath Singh, J.

1. By way of this writ petition, the petitioners have prayed for issuance of a writ , order or direction in the nature of Certiorari for quashment of the orders dated 30.01.2010 and 04.12.2009 issued by the Joint Registrar, Cooperative Societies, U.P., Lucknow vide Annexure Nos. 1 & 2 herein on the grounds that these orders are void, illegal and without jurisdiction and also a writ , order or direction in the nature of Mandamus Commanding the respondents to treat the Northern Railway, Primary Cooperative Bank (for short 'the NRPCB') as a Multi State Cooperative Society, and thus, not to apply the provisions of the U.P. Cooperative Societies Act, 1965 (for short 'the State Act of 1965') besides other usual prayers of general nature.

2. During the course of hearing, at the very outset, learned Counsel for respondents informed the Court that the letter dated 04.12.2009 and the order dated 30.01.2010 issued by the Joint Registrar, Cooperative Societies, U.P., Lucknow vide annexure No. 1 and 2 have since been withdrawn, thus, now the one and only question that would survive for consideration of this Court would be as to whether in the obtaining facts and circumstances of the case, should this Court issue a writ, order or direction in the nature of Mandamus to command the respondents to treat the NRPCB as a Multi State Cooperative Society and resultantly, to restrain/desist from applying the provisions of the State Act of 1965.

3. The brief facts of the case leading to filing of this writ petition are that the Joint Registrar, U.P. Co-operative Societies, Lucknow, (respondent No. 3) issued a letter (Ref. No. 6560/Cooperative dated December 4, 2009) informing the NRP Cooperative Bank that till the Bank is registered with the Central Registrar, it would be subject to the prescription of the provisions of the State Act of 1965. Thereafter, the respondent No. 3 issued another order dated 30.01.2010 in exercise of powers conferred under Notification No. 3328-C/12 C.A.-25 (1)/67 dated 24.06.1969 read with Notification No. 65/49-200-148 (5)/2006 dated 26.07.2006 in terms of Section 128 of the State Act of 1965 to say that the Chairman and Secretary of the Managing Committee of the NRPCB shall reconsider its decisions taken in the meeting dated 23.01.2010 and inform him accordingly before 15.02.2010, and till then, he stayed the decisions taken in the said meeting.

4. It appears from the background of the NRPCB that it was registered as a Society under the provisions of the State Act of 1965 with its area of operation being as under:

1. Lucknow Division, C.C.S. Office Varanasi.

2. Moradabad Division.

3. Allahabad Division & Diesel Loco Motive Workshop, Varanasi, concrete sleeper Plant Allahabad concrete sleeper Plant, Khanishpur, Senior Tele Communication Engineer, Microwave Department.

4. Loco work Shop, Lucknow.

5. Carriage and Wagon Workshop, Lucknow and other Departments such as Electric, Stores, Medical & P.P.F. Department.

5. The pleadings of the writ petition would show that at present there are more than 80,000 members of the NRPCB, who are spread over the State of U.P. and Uttarakhand/Uttaranchal and it has a working capital/corpus of over 250 crores. The management of the Bank is controlled and governed by a Sanchalak Mandal comprising of 15 members including a Chairman and four Vice Chairmen. The Divisional Railway Manager concerned becomes the Ex-officio Chairman and four Vice Chairmen and ten members of the Managing Committee are elected by the General body. With the coming into force of the U.P. Reorganisation Act, 2000 (for short 'the Act of 2000'), passed by the Parliament, the State of Uttarakhand/Uttaranchal was carved out and created, thus, the area of operation of the Bank/Society ceased to be strictly limited to the present territorial jurisdiction of the State of U.P. In this background, the petitioners raised the demand for conferring the status of a Multi State Co-operative Society on the NRPCB so that it is governed by the provisions of the Multi State Cooperative Societies Act, 2002 (for short 'the Central Act of 2002'). Section 3 of the U.P. Reorganisation Act, 2000 being relevant herein is reproduced as under:

3. Formation of Uttarakhand State

On and from the appointed day, there shall be formed a new State to be known as the State of Uttarakhand comprising the following territories of the existing State of Uttar Pradesh namely;- Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat, Rudra Prayag & Hardwar Districts.

6. It would also appear from the pleadings that the area of operation of the Bank automatically stood extended to the State of Uttarakhand/Uttaranchal which included the places like Laksar, Haridwar and Rishikesh etc. Accordingly, vide Annexure 5, a certificate to that effect was issued by Assistant Divisional Engineer, Northern Railway, Moradabad. Though the Act of 2000 does not cover the existing

Cooperative Societies now having area of operation also in Uttrakhand/Uttaranchal as its subject matter, but by virtue of the enactment of the Central Act of 2002 (Section 103), the NRPCB/Society having its area of operation in more than one State became a Multi State Cooperative Society and thus the provisions of the State Act of 1965, would not be applicable for the purposes of constitution, reconstitution, management etc. and the Registrar, Cooperative, U.P., Lucknow would now not be vested with powers of taking action in the matter of the Bank and on the contrary the provisions of Section 103 of the Central Act of 2002 would be applicable for the said purposes. Section 103 of the said Act on reproduction reads as:

103-Co-operative Societies functioning immediately before reorganisation of States (1) Where, by virtue of the provisions of Part II of the states Reorganisation Act, 1956 (37 of 1956) or any other enactment relating to re-organisation of States, any cooperative Society which immediately before the day on which the reorganisation takes place, had its objects confined to one State becomes, as from that day, a Multi State Co-operative Society, it shall be deemed to be a multi State Cooperative Society registered under the corresponding provisions of this Act and the bye laws of 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.

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

8. Learned Counsel for petitioners submitted that the application for registration of the NRPCB/Society as a Multi State Society under the Central Act of 2002, is still pending with the Central Registrar. Learned Counsel referred to a judgment of the Supreme Court reported in 2009 (5) ALJ 496 (Naresh Shankar Srivastava v. State of U.P. and Ors.) in support of his contention. Learned Counsel also referred to a judgment of learned Single Judge of this Court rendered in a bunch of writ petitions connected with Writ Petition No. 1719 (S/S) of 2008 (Smt. Archana Singh and Ors. v. Joint Registrar, Co-operative Societies and Ors.), wherein the learned Single Judge has discussed that the view taken by this Court in Writ Petition No. 5171 (MB) of 2002 (Mahesh Kumar Gupta and Ors. v. State of U.P. and Ors.) holding that the U.P. Postal Primary Co-operative Bank Limited, Lucknow

registered as a Primary Co-operative Society under the State Act of 1965 was not a Multi-State Co-operative Society to be governed by the provisions of the Central Act of 2002, did not find favour with a Division Bench of the Uttarakhand/Uttaranchal High Court in Writ Petition No. 608 (MB) of 2008 (Kishori Lal and Ors. v. State of Uttaranchal), which took a contrary view and held that the Bank was Multi-State Co-operative Society having its area of operation in the State of U.P. and Uttarakhand/Uttaranchal and thus it was covered under the provisions of the Central Act of 2002. The controversy came up before the Apex Court and the Apex Court came to the conclusion that the Bank was a Multi-State Co-operative Society and the provisions of the State Act of 1965 would not be applicable to the Bank. Thus, the view taken by the Uttarakhand/Uttaranchal High Court was affirmed.

9. On the other hand, learned Counsel for respondents referred to an order of a co-ordinate Bench of this Court in Writ Petition No. 12024 (MB) of 2009 (Sandeep Kumar Chatterjee v. State of U.P.) which only refers to a proceeding pending under Section 128 of the State Act of 1965 before the Joint Registrar, Cooperative Societies, Lucknow. The operative portion of the order reads as follows:

It will be open to the petitioner to participate in the proceedings before the Joint Registrar, Co-operative Societies under Section 128 of the Co-operative Societies Act.

The writ petition is accordingly disposed of

10. A reply received from the Ministry of Agriculture, Department of Agriculture and Cooperation, Government of India, sought under the RTI Act, 2005, was also brought to our notice to demolish the contentions of learned Counsel for petitioners that the NRPCB is a deemed Multi-State Co-operative Society in view of its area of operation.

11. The reply received under the RTI Act, 2005, on reproduction reads as:

Northern Railway Primary Co-operative Bank Limited, Lucknow has sent a proposal for deemed registration as a multi-State Cooperative society to the Office

of the Central Registrar of Cooperative Societies. The proposal is being examined in accordance with the provisions of the Multi-State Co-operative Societies (MSCS) Act, 2002 and rules framed thereunder. Since as on date, Northern Railway Primary Co-operative Bank Ltd., Lucknow is not a multi- State Co-operative Society, it is governed by the provisions of the U.P. Co-operative Societies Act.

12. On due consideration of rival submissions and from perusal of the records we find that the area of operation of the Bank/Society in question is not only limited to the State of U.P. but a sizeable number of its members are also from the State of Uttaranchal/ Uttarakhand. This assertion is also supported by a certificate issued by the Assistant Divisional Engineer, Northern Railway, Moradabad. Besides, in the case of a similar Co-operative Bank known as U.P. Postal Primary Co-operative Bank Limited having area of its operation in U.P. and Uttarakhand/Uttaranchal, both, the Apex Court has affirmed the view taken by the Uttarakhand/Uttaranchal High Court that it is a Multi-State Co-operative Society. Moreover, in the subsequent judgments in Civil Appeal (No. 290 of 2005-Hemant Kumar v. Registrar Cooperative Societies, U.P. and Ors.) and Civil Appeal (Nos. 292-294 of 2005 Naresh Shankar Srivastava v. State of U.P.) reported in 2009(5) ALJ 496, the Apex Court has taken a similar view. That case related to a society known as the U.P. Cooperative Processing & Cold Storage Federation Limited Lucknow (in short 'the PACSFED'). While taking the view that it is a deemed Multi-State Co-operative Society registered under the corresponding provision of the Multi-State Act, 1984, the Apex Court held in para 24 as under:

It has been contended by the respondents that in view of Section 129 of the Uttaranchal Act which came into force in 2003, 14 member societies of PACSFED in Uttaranchal would automatically become registered under the Uttaranchal Act. However, the said contention is legally untenable. Once the State of U.P. was bifurcated by the Reorganisation Act which came into force on 09.11.2000, Section 95 automatically got attracted. By virtue of Section 95 of the Multi-State Act, PACSFED becomes a Multi-State Society. On 14.02.2001, when the Central Registrar of the Multi-State Co-operative Societies issued the Registration Certificate granting registration of the PACSFED under the Multi-State Act,

admittedly, the Uttaranchal Act of 2003 was not in existence. Even otherwise, a State legislation viz. Uttaranchal Act which has been enacted subsequently cannot have an overriding effect over a central law viz. The Multi-State Act. The Uttaranchal Act can govern and regulate the Co-operative societies whose objects extend to and apply within the State of Uttaranchal. So, the finding of the High Court that with the enforcement of the Uttaranchal Co-operative Societies Act, 2003, with effect from 21.05.2003, the Multi-State Act shall not be applicable is erroneous. The bye laws of the PACSFED have not been amended so far. The area of operation of the PACSFED as laid down in its bye-laws is still the same as it was on the date of reorganisation of the State of U.P. Therefore it would be legally impermissible to say that now the area of operation of the PACSFED is confined to the State of U.P. alone and that it has ceased to be multi-state Co-operative Society. As far as withdrawal of member-co-operative Societies of the PACSFED operating in the State of Uttaranchal is concerned, the deemed conversion of a Co-operative society into a multi-State Cooperative Society by virtue of Section 95 of Multi-State Act is an irreversible process and the membership of a multi-State society in a particular State at a given point of time is only a fortuitous circumstances on the basis of which a multi-state society cannot automatically revert to assume the character of a State Co-operative society. Further, there is no provision in the Multi State Act which permits such automatic conversion of a multi-state Co-operative society into a State Co-operative Society by operation of law. The only relevant consideration for continuance of a multi-State Cooperative society as a Multi State Co-operative Society is that it should have its objects not confined to one State and since the objects of the PACSFED still remain the same as it was immediately before the reorganisation of the State of Uttar Pradesh, it shall be deemed to be a multi-State Co-operative society by virtue of deeming provision of Section 95 of the Multi-State Act.

13. In view of the legal position being clear, it appears that the Joint Registrar, Co-operative societies, Lucknow, in his wisdom rightly thought it appropriate to withdraw the impugned orders being the subject matter of prayer No. 1. Needless to say that the NRPCB has been formed with a present working capital of over 250 crores from the hard earned money of Railway workers (most of them working on Class III & IV posts), who are the members of a Central Organisation, and in view

of the area of operation (being the State of U.P. and the State of Uttarakhand/Uttaranchal) and the Central Act of 2002 as also in terms of the judgments of the Apex Court in the cases of similarly situated other societies, if they have decided to opt for the registration of Society with the Central Registrar under the Central Act of 2002, who may perhaps better secure their assets in the present scenario, it would not be open for the State authorities or the official superiors on managerial posts in Railways to wrangle with the issue.

14. In view of all the aforesaid discussions, we allow the writ petition in terms of prayer No. 2 and hold that the Northern Railway Primary Cooperative Bank is a deemed Multi-State Co-operative Society and thus we direct the Central Registrar to register the Bank as such, on completion of procedural formalities without delving much to the extent of causing unnecessary delay. Hence, we further direct that the Central Registrar shall complete the exercise within a period of one month from the date of production of a copy of this order.

15. With the aforesaid direction and observations, this writ petition stands allowed.

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