

(2011) 07 PAT CK 0225

Patna High Court

Case No: LPA No. 33 of 2011; CWJC No's. 4587 and 5090 of 2011

The Bihar Rajya Sahkari Bhumi
Vikas Bank Simit, Budha Marg,
Patna and Others

APPELLANT

Vs

The State of Bihar and Others

 Bihar State Co-operative
Land Development Bank Ltd. Vs
The Union of India and Others

RESPONDENT

Date of Decision: July 20, 2011

Acts Referred:

- Multi-State Cooperative Societies Act, 1984 - Section 95, 95(1)

Citation: (2012) 3 PLJR 873

Hon'ble Judges: Shivaji Pandey, J; Shiva Kirti Singh, J

Bench: Division Bench

Advocate: Y.V. Giri, Rajesh Prasad Choudhary, for the Appellant; Raghib Ahsan for the Union of India, Mr. Nasrul Hoda Khan for the State and Mr. S.B.K. Manglam for the Private Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the Bihar Rajya Sahkari Bhumi Vikash Bank Simit and its officials, the appellant. He has clarified that name of the appellant bank has now undergone a change and it is now known as Bihar and Jharkhand Rajya Sahkari Bhumi Vikash Bank Simit. Also heard learned counsel for the other parties including the State of Bihar, private respondents and learned counsel for the Union of India. The issue involved in LPA No. 33/2011 as well as in CWJC No. 4587 of 2011 and in CWJC No. 5090 of 2011 is identical and for this reason all the cases are being heard together.

2. 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 Society and its bye laws continued to be in force only insofar as they are not inconsistent with the provisions of the Act. It has further been submitted that subsequently new bye-laws have been enacted and registered.

3. 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 Section 4 of the Act.

4. 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](#), 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 Cooperative, 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.

5. It may be useful to quote paragraph 17 of the aforesaid judgment in the case of Naresh Shankar (supra) which runs as follows:--

As noted earlier, Section 95 of the Multi State Act takes care of a situation arising out of reorganization of States of certain class of co-operative societies. Indeed, the very rationale or legal justification of having such a provision in the statute book is to provide continuity to those co-operative societies, the objects of which were confined to one State immediately before the day on which the reorganization takes

place but as from the day of the reorganization of the State its object extends to more than one State, by declaring that such co-operative societies shall be deemed to be a Multi State Co-operative 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 Co-operative Societies Act over more than one State as a State Act cannot have extra-territorial operation and the multi State Co-operative Societies cannot be regulated by a State Co-operative Societies Act.

6. Thus, there is no difficulty in holding that the State Co-operative Societies Act applicable to co-operative societies within the State of Bihar cannot apply to Multi State Co-operative Societies like the appellant. Hence, the Registrar, Co-operative Societies, Bihar, Patna shall have no jurisdiction to exercise appellate or any other kind of statutory power in respect of employees of the appellant co-operative bank. To be fair to learned counsel for the writ petitioner, it must be noted that he has raised another controversy to controvert the claim of appellants by placing reliance upon bye-laws and service regulations framed by the bank at the relevant time.

7. According to learned counsel for the writ petitioner, the Registrar, Co-operative Societies, Bihar will have power to hear appeals on account of bye-laws and service regulations of the bank in existence at the relevant time. The statutory provision in Section 103 of the Act is absolutely clear that as soon as a co-operative society is deemed to be a Multi State Co-operative Society, bye-laws of such society shall exist only to the extent they are not inconsistent with the provisions of this Act. As a natural corollary, parts of the bye-laws and service regulations etc. inconsistent with the provisions of the Act conferring jurisdiction upon Registrar, Co-operative Societies, Bihar under another statute shall cease to have any effect once a co-operative society becomes a Multi State Co-operative Society.

8. In view of aforesaid discussions and findings, the LPA has to be allowed because the dispute arising out of dismissal of the writ petitioner could not be decided by the Registrar, Co-operative Societies, Bihar. Hence, the judgment and order dated 22.11.2010 is set aside. The matter is, however, remitted back to the writ court for rehearing and deciding the writ petition on its own merit. Since the writ petitioner is out of service, we request the writ court to hear the writ petition against the order dismissing him from service at an early date, preferably, within four weeks.

9. CWJC No. 4587 of 2011 has been preferred by the co-operative bank challenging the order passed by the Registrar, Co-operative Societies, Bihar, Patna after the matter was remitted to him by the writ court to hear the dispute arising out of dismissal of Virendra Singh Gautam. In view of discussions and findings recorded earlier the order passed by the Registrar, Co-operative Societies, Bihar, Patna is set aside as it is without jurisdiction and in violation of provisions of the Act. CWJC No. 4587 of 2011 is, accordingly, allowed.

10. It is made clear that the dispute arising out of dismissal of the concerned employee shall be decided on merits by the writ court. So far as CWJC No. 5090 of 2011 is concerned, the writ petition is still to be decided on merits by the learned Single Judge but the case was tagged with the other matters only for a decision on the issue whether the Registrar, Co-operative Societies, Bihar, Patna will have jurisdiction to decide the dispute against the petitioner co-operative bank after it became a Multi State Co-operative Society. Since this issue has been decided by us through this order, it is expected that now CWJC No. 5090/2011 shall be decided on its own merit keeping in view the issue decided by the present order and for that purpose the writ petition is remitted back to the writ court for its decision on merits.