
(2003) 06 JH CK 0048

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3201 of 2002

Bihar State Cooperative Milk Producers' Federation Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 41, 42

Citation : (2003) 2 BLJR 1467 : (2003) 3 JCR 302

Hon'ble Judges : S.J. Mukhopadhaya, J;R.K. Merathia, J

Bench : Division Bench

Advocate : A. Allam and N. Sharmin, P.K. Prasad, S.C.G.S.C. and Ramkishore Prasad, A.C.G.S.C., P.K. Sahi and D. Roshan, for the Appellant; Anil Kr. Sinha, AG and R. Sanchita, JC to AG, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Secretary, Department of Animal Husbandry and Fisheries, Government of Jharkhand issued an order No. 52 dated 23rd November, 2001 under Sections 41 and 42 of the Bihar Re-organization Act, 2000 declaring the Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi of Bihar State Co-operative Milk Producer's Federation Limited (hereinafter referred to as COMFED) as immovable and movable properties of the State of Jharkhand. The Chief Executive Officer/ Manager of the dairies and Cattle Feed Factory, Ranchi were directed to function under the control of Department of Animal Husbandry and Fisheries, Government of Jharkhand with immediate effect.

2. The Managing Director, COMFED by letter No. 7035 dated 26/27th November, 2001 informed the Secretary, Department of Animal Husbandry and Fisheries, Government of Jharkhand that the provision of Sections 41 and 42 of the Bihar Re-organization Act, 2000 relates to division of assets/liabilities of the State Government and not of legal entities like Co-operative Societies. It further informed that the COMFED, the Co-operative Society, after re-organization has

become a Multi-State Co-operative Society. The order No. 52 dated 23rd November, 2001 was alleged to be not in accordance with law and, thereby, requested the Secretary to rescind/recall the order aforesaid.

Subsequently, the Government of Jharkhand issued a Resolution No. Gavya/ Yo 813/2001 - 444 dated 4th June, 2002 under Sections 41 and 42 of the Bihar Reorganization Act, 2000 and taken over the aforesaid Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi.

In this background, the petitioner has challenged the order No. 52 dated 23rd November, 2001 issued by the Secretary, Department of Animal Husbandry and Fisheries, Government of Jharkhand and the Resolution No. Gavya/Yo - 813/2001 -444 dated 4th June, 2002 in the present case on the ground that they are illegal and without jurisdiction.

During the pendency of the writ petition, the Central Registrar, Multi-State Co-operative Societies, New Delhi passed an order on 5th November, 2002, communicated vide letter No. L - 11016/9/2002 - L & M dated 4th December, 2002 and refused to declare the COMFED a Multi-State Co-operative Society. The aforesaid decision has also been challenged by the petitioner by filing a petition for amendment of prayer, I.A. No. 335 of 2003.

3. The questions for consideration are :

(a) Whether Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi situated within the territory of Jharkhand belonged to the petitioner or erstwhile State of Bihar and stood transferred to the successor State of Jharkhand under Sections 41 and 42 of the Bihar Re-organization Act, 2000 or not.

(b) Whether, after re-organization of the State, the COMFED, a Co-operative Society shall be deemed to be a Multi-State Co-operative Society u/s 95(1) of the Multi-State Cooperative Societies Act, 1984 or not.

4. To appreciate the points involved, it is necessary to set out few facts as also the claim and counter claim of the parties.

The case of the petitioner is that initially the dairy activities in the State of Bihar used to be carried out by the erstwhile State of Bihar through "Bihar State Dairy Corporation" (hereinafter referred to as the dairy Corporation), a registered Government Company. The dairy Corporation failed to achieve the objects, Subsequently, a pilot scheme in the name and style of "Operation Flood" was launched by National Dairy Development Board (hereinafter referred as Dairy Development Board). As a policy decision, it was decided to launch Operation Flood Scheme through Co-operative Sector with an apex federation at the helm of affairs.

As per the Operation Flood Scheme, a Co-operative Society in the name and

style "COMFED" was registered under the Bihar Co- operative Societies Act. 1935, Certain assets of Dairy Corporation were transferred by the State of Bihar in favour of petitioner.

According to petitioner neither movable, nor the immovable properties of Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi belonged to the erstwhile State of Bihar. All assets of the aforesaid three dairies and the Cattle Feed Factory belongs to petitioner.

It is stated that the Jamshedpur Milk Supply Scheme of Dairy Corporation was transferred to COMFED by erstwhile State of Bihar on management basis but it was defunct. The bottling plant at Jamshedpur soon become scrap.

Subsequently, COMFED purchased 10 acres of land on long term lease hold basis from Adityapur Industrial Area Development Authority for consideration of Rs. 12,23,388/-.

In support of aforesaid claim, the petitioner relied on letter No. 696/A.D.A. dated 14th May, 1998 issued by the Adityapur Industrial Area Development Authority and the letter issued by petitioner No. 2247 dated 28th June, 2001 whereby it was shown that a sum of Rs. 12,23,388/- was paid towards cost of the land, interest etc. vide Cheque No. 3086199 dated 28th June, 2001.

So far as Ranchi Dairy, Ranchi is concerned, the case of petitioner is that it obtained 20 acres of land at Hatia, Ranchi from H.E.C., Ranchi on 30 years lease and the Ranchi Dairy, Ranchi has been set up by petitioner on such 20 acres of H.E.C. land, which never belonged to the then State of Bihar. Reliance has been placed on a letter dated 6th June, 1990 issued by the Animal Husbandry & Fisheries Department in support of such claim. The petitioner also claimed that the Bokaro Dairy, Bokaro is situated over the land which petitioner obtained from Bokara Steel Plant on a token rent of Re. 1/- per annum.

Counsel for the petitioner relied on one or other enclosure attached to the paper book in support of claim aforesaid.

5. According to State of Jharkhand, all the three dairies were set up in Ranchi, Bokaro and Jamshedpur by the then State of Bihar out of fund of the State of Bihar and loan and grant received from Dairy Development Board between 1984-95. The Cattle Feed Factory, Ranchi was set up by the then Government of Bihar.

Further case of respondent-State of Jharkhand is that the three dairies aforesaid and the Cattle Feed Factory, Ranchi were subsequently handed over to the petitioner-COMFED only for management purpose. During 4th plan between 1967-70, two more plants were inducted at Bokaro and Ranchi out of fund of State of Bihar. Learned Advocate General, Jharkhand relied on certain communications made between the officials of the State of Bihar and the petitioner.

The successor State of Bihar supported the petitioner's claim that the movable and immovable properties belonged to petitioner, which were either legally transferred to petitioner or the petitioner created those assets of its own.

Reliance was placed on a decision of this Court in the case of *Sayed Azmat Hus-sain v. Regional Institute of Technology*, reported in 2002 (1) JLR 188 to suggest that a Co-operative Society is not covered by the Bihar Re-organization Act, 2000, for the purpose of division of assets between successor State of Bihar and Jharkhand.

There are other claim and counter claim made by the parties relating to assets and liabilities. The petitioner claimed that a sum of Rs. 1.50 crores is outstanding against the then State of Bihar which has not been paid. The State of Bihar has not cleared the dues towards cattle feed supply made by "COMFED" to the State Government farms.

It appears that loan of Rs. 570.97 lacs was taken by petitioner from the Dairy Development Board, the erstwhile State of Bihar was the guarantor. The loan amount stated to have been taken for other units, namely, VPMU, Barauni, Timul and MMU which has nothing to do with the Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi.

6. Sections 41 and 42 of the Bihar Re-organization Act, 2000 relate to apportionment of assets and liabilities of the erstwhile State of Bihar between the successor States of Bihar and Jharkhand, as quoted hereunder :

"41. Application of Part.--(1) The provisions of this Part shall apply in relation to the apportionment of the assets and liabilities of the existing State of Bihar immediately before the appointed day.

(2) The successor States shall be entitled to receive benefits arising out of the decisions taken by the predecessor State and the successor States shall be liable to bear the financial liabilities arising out of the decisions taken by the existing State of Bihar.

(3) The apportionment of assets and liabilities would be subject to such, financial adjustment as may be necessary to secure just, reasonable and equitable apportionment of the assets and liabilities amongst the successor States.

(4) Any dispute regarding the amount of financial assets and liabilities shall be settled through mutual agreement, failing which by order by the Central Government on the advice of the Comptroller and Auditor-General of India.

42. Land and Goods.--(1) Subject to other provisions of this Part, all land and all stores, articles and other goods belonging to the existing State of Bihar, shall --

(a) if within the transferred territory, pass to the State of Jharkhand; or

(b) in any other case, remain the property of the State of Bihar;

Provided that, where the Central Government is of opinion that a goods or class

of goods should be distributed between the State of Bihar and Jharkhand, otherwise that according to the situation of the goods, the Central Government may issue such directions as it thinks fit for a just and equitable distribution of the goods and the goods shall pass to the successor states accordingly.

(2) Stores held for specific purposes, such as use or utilization in particular institutions, workshops or undertakings or on particular works under construction, shall pass to the successor States in whose territories such institutions, workshops undertakings or works are located.

(3) Stores relating to the Secretariat and offices of Heads of Departments having jurisdiction over the whole of the existing State of Bihar shall be divided as may be agreed upon between the successor States, or in default of such agreement, as the Central Government may by order direct for a just and equitable distribution of such stores.

(4) Any other unissued stores of any class in the existing State of Bihar shall be divided between the successor States in proportion to the total stores of that class purchased in the period of three years period to the appointed day, for the territories of the existing State of Bihar included respectively in each of the successor States :

Provided that, where such proportion cannot be ascertained in respect of any class of stores or where the value of any class of such stores does not exceed rupees ten thousand, that class of stores shall be divided between the successor States according to the population ratio.

(5) In this Section, the expression "land" includes immovable property of every kind and any rights in or over such property, and the expression "goods" does not include coins, bank notes and currency notes."

There is a separate provision u/s 56 of the Bihar Re-organization Act, 2000 in respect to liability of the erstwhile State of Bihar as guarantor of a registered Co-operative Society, which reads as follows : "56. Liability as guarantor.--Where, immediately before the appointed day, the existing State of Bihar is liable as guarantor in respect of any liability of a registered co-operative society or other person, that liability of the existing State of Bihar shall,--

(a) if the area of operations of such society or persons is limited to the territories which, as from that day are the territories of either of the States of Bihar or Jharkhand, be a liability of that successor State; and

(b) in any other case, be initially a liability of the State of Bihar, subject to such financial adjustment as may be agreed upon between the State of Bihar and Jharkhand or, in default of such agreement, as the Central Government may, by order, direct."

7. From the pleading, claim & counter claim of the parties, it is evident that there is a disputed question of right and title in respect to the Ranchi dairy, Ranchi

Bokaro dairy, Bokaro, Jamshedpur dairy, Jam-shedpur and Cattle Feed Factory, Ranchi which cannot be determined by this Court under Article 226 of the Constitution of India. Further, there being a third party raising the disputed question of right and title, the respondent-State of Jharkhand should not have determined the claim of their own, nor should have taken over the control of the dairies and cattle feed plant in question. In fact, the State of Jharkhand should have referred the dispute to the Central Government for adjudication, the petitioner having raised the disputed question of right and title and jurisdiction of the State of Jharkhand by its letter No. 7035 dated 26/27th November, 2001.

In the aforesaid circumstances, this Court is not inclined to determine the first issue at this stage i.e. Whether Ranchi dairy, Ranchi, Bokaro dairy, Bokaro, Jamshedpur dairy, Jamshedpur and Cattle Feed Factory, Ranchi situated within the territory of Jharkhand belonged to the petitioner or to the erstwhile State of Bihar and thereby stood transferred to the successor State of Jharkhand under Sections 41 and 42 of the Bihar Re-organization Act. 2000 or not. It requires a determination by the Central Government at first instance.

8. So far as the second issue No. (b) is concerned, the successor State of Bihar has supported the plea taken by the petitioner that the COMFED is deemed to be a Multi-State Co-operative Society as per Section 95(1) of the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to M.S. Co-operative Societies Act. 1984) from the date of re-organisation of the State i.e. w.e.f. 15th November, 2000. The aforesaid stand has been opposed by the Union of India and the State of Jharkhand as. according to them, the petitioner Co-operative Society do not fulfill the criteria laid down u/s 5 of the Multi-State Co-operative Societies Act, 1984 to claim it as a Multi-State Co-operative Society.

The stand of the State of Jharkhand has been noticed by the Central Registrar, Multi-State Co-operative Society, Government of India at para-4 to the impugned order dated 5th November, 2002, as quoted hereunder :

"The Government of Jharkhand objected to the registration of COMFED under the MSCS Act vide their representation dated 19.6.2002 and a subsequent letter dated 30.9.2002 refuting the contentions of COMFED. Briefly, the State of Jharkhand has objected on following grounds :

(i) the 98 milk cooperative mentioned in the list of COMFED are primary societies of Ranchi district. Most of them were initially organized by the State Dairy Directorate and they are affiliated to Ranchi District Milk Union, which is not a member of COMFED. The role of COMFED in respect of these societies is limited in procuring milk from them. They are not members of COMFED.

(ii) The role of COMFED is in-organizing primary dairy milk cooperatives is confined to districts of present State of Bihar coming under project area of operation flood. All the 22 districts of the State of Jharkhand are under the non-operation flood area.

(iii) As per bye-laws 5 of COMFED, only district milk unions may become member of COMFED. The primary societies cannot even become members of the COMFED.

(iv) 12 district milk unions have been organized and registered by the State Dairy Directorate of Jharkhand and none of these unions is nominal or ordinary member of COMFED.

(v) The Government of Jharkhand has entered a memorandum of understanding with the NDDDB to implement the dairy development activities in the rural areas with the cooperation of NDDDB.

(vi) As per provisions of the MSCS Act, 1984, no Multi-State Society can be registered unless the main object of the society is to serve the interest of members in more than one State."

9. It is to be noticed that the Multi-State Co-operative Societies Act, 1984 was repealed by Multi-State Co-operative Societies Act, 2002. However, as the M.S. Co-operative Societies Act, 1984 was applicable on the date of re-organization i.e, 15th November, 2000, the date from which petitioner claimed to be a Multi-State Cooperative Society, it is desirable to refer the relevant provisions of Multi-State Co-operative Societies Act, 1984, which were applicable and are almost same to the corresponding provisions of Multi-State Co-operative Societies Act, 2002.

Sub-section (a) of Section 3 of Multi-State Co-operative Act, 1984 defines "Multi-State Co-operative Society", means a "a Society registered" or "deemed to be registered" under the Act and includes a National Co-operative Society.

Section 5 of M.S. Co-operative Societies Act, 1984 stipulates the Multi-State Co-operative Society which may be registered whereas Section 7 provides registration of a proposed Multi-State Cooperative. Society, as quoted hereunder :

"5. Multi-State Co-operative Societies which may be registered.--(1) No multi-State Co-operative Society shall be registered under this act, unless the main objects of the society are to serve the interests of members in more than one State.

(2) Subject to the provisions of Subsection (1), a multi-State Co-operative Society which has as its objects the promotion of the economic and social betterment of its members through mutual aid in accordance with the cooperative principles or a Multi-State Co-operative Society established with the object of facilitating the operations of other such societies or of Co- operative Societies or of both may be registered under this Act.

(3) The word "Limited" or its equivalent in any Indian language shall be suffixed to the name of every multi-State Co-operative Society registered under this Act with limited liability.

7. Registration.--(1) If the Central Registrar is satisfied--

- (a) that the application complies with the provisions of this act and the rules.
- (b) that the proposed Multi-State Co-operative Society satisfies the basic criterion that its objects are to serve the interests of members in more than one State;
- (c) that there is no other Multi-State Co-operative Society having similar area of operation and identical objects;
- (d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and
- (e) that the proposed Multi-State Cooperative Society has reasonable prospects of becoming a viable unit, he may register the Multi-State Co-operative Society and its bye-laws.

(2) Where the Central Registrar refuses to register a Multi-State Cooperative Society, he shall communicate the order of refusal together with the reasons therefor, to such number of the applicants and in such manner as may be prescribed.

(3) The application for registration shall be disposed of by the Central Registrar within a period of six months from the date of receipt thereof by him :

Provided that if the Central Registrar is unable to dispose of the application within the period aforesaid, he shall make a report to the Central Government stating therein the reasons for his inability to do and the Central Government may allow him such further period or period as is considered necessary to dispose of such application."

There is a separate provision u/s 95(1) of Multi-State Co-operative Societies Act, 1984 in terms of which an existing Registered Co-operative Society, after re-organisation of State, is deemed to be Multi-State Co-operative Society, as quoted hereunder :

"95(1) Where by virtue of the provisions of Part II of the States Reorganization Act, 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 Co-operative 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."

From the definition of "Multi-State Cooperative Society" u/s 3(k), it will be evident that there are two types of Multi-State Co-operative Society, namely, (i) a registered Multi- State Co-operative Society and (ii) a deemed Multi-State Co-operative Society, deemed to be registered u/s 95(1) of the Act.

Further, if the provisions of Section 5 is read along with Sections 7 and 95(1) of

the Multi-State Co-operative Societies Act, 1984, it will be evident that the Sections 5 and 7 of Multi- State Co-operative Societies Act, 1984 relates to "a proposed Multi-State Co-operative Society" whereas Section 95(1) relates to "an existing Registered Co-operative Society", which on or from the date of re-organization, shall be deemed to be a Multi- State Co-operative Society registered under the corresponding provisions of Multi-State Co-operative Societies Act, 1984 and the bye-laws of such Society shall continue to be in force until altered or rescinded, if otherwise not inconsistent with the provisions of the Act.

Thereby, while registration of a "pro posed Multi-State Co- operative Society" is required to be made u/s 5 of Multi-State Co-operative Societies Act, 1984, no such registration is required for an existing registered Co-operative Society, which is deemed to be a Multi-State Cooperative Society from the date of re-organisation u/s 95(1) of the Multi-State Co-operative Societies Act, 1984. In case of such deemed Multi-State Co-operative Society, merely a declaration and certificate of registration are required, as given by the Central Registrar of Multi-State Co-operative Society in the case of "Uttar Pradesh Co-operative Federation Limited, Lucknow (U.P.), which was also similarly situated like the petitioner and quoted hereunder :

"No. L-11015/16/2000-L & M Government of India Ministry of Agriculture (Deptt. of Agriculture & Co-operation) Krishi Bhavan, New Delhi, Dated the 14th February, 2001 CERTIFICATE OF REGISTRATION

Consequent on re-organisation of State of Uttar Pradesh and in pursuance of the provision under Sub-section (1) of Section 95 of the Multi-State Co-operative Societies Act, 1984, a Society by the name Uttar Pradesh Co-operative Federation Ltd., Lucknow (U.P.), registered under the Uttar Pradesh Cooperative Societies Act, 1965 shall be deemed to be registered as a Multi-State Co-operative Society u/s 7(1) of the Multi-State Co-operative Societies Act, 1984. The registration number of the Society is MSCS/cross-examination/122/2001. The area of operation of the Society will be confined to the State of Uttar Pradesh and State of Uttaranchal. The bye-laws of the Society shall in so far as they are not in consistent with the provision of the Act, continue to be in force until altered or rescinded.

Given under my hand and Seal this the day of 14th February, 2001.

Sd/- (K.S. Bhoria) Joint Secretary to the Government of India & Central Registrar of Co-operative Societies"

Thus, the second issue (No. b) stands decided in favour of petitioner-COMFED which is deemed to be a Multi-State Cooperative Society under Sub-section (1) of Section 95 of Multi- State Co-operative Societies Act, 1984, since the date of reorganization of State of Bihar i.e. with effect from 15th November, 2000.

10. In view of finding aforesaid, the Order No. 52 dated 23rd November, 2001

(Annexure 1) and the Resolution No. 444 dated 4th June, 2002 (Annexure 5) issued by the authorities or by Government of Jharkhand and the Order dated 5th November, 2002 passed by the Registrar, Co-operative Society, communicated vide letter No. L - 11018/9/2002 - L & M dated 4th December, 2002 are set aside.

The parties are given liberty to raise the dispute before the Central Government for determination of the first issue (No. a), as mentioned above. If any such dispute is raised, the Central Government is expected to determine it after hearing both the successor States of Bihar and Jharkhand as also the petitioner, who also claimed right and title.

For the purpose of grant of certificate of registration as deemed Multi-State Cooperative Society in favour of COMFED, the case is remitted to the Central Registrar, Multi-State Co-operative Societies, Government of India, who will issue appropriate certificate as per decision of this Court.

11. The writ petition is allowed, with the aforesaid observations/directions. However, there shall be no order, as to costs.

R.K. Merathia, J.

I agree.