

(2014) 11 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14757 of 2011

Kavita Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 243ZI

Citation : AIR 2015 Patna 10 : (2015) 2 PLJR 452

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Ranjeet Kumar Mishra and Pashupati Pd. Sinha, Advocate for the Appellant; Rajesh Kr. Singh, R.K. Jha, Ajay Bihari Sinha and Mukesh Kumar, Advocate for the Respondent

Judgement

Hemant Kumar Srivastava, J.—Petitioners have filed this writ petition under Article 226 of the Constitution of India for quashing the letter no. 6031 dated 02.11.2010 issued by respondent no. 4, the Joint Registrar, Co-operative Societies, Bihar, Patna on the direction of respondent no. 3, the Registrar, Co-operative Societies, Bihar, Patna by which respondent no. 4 informed the petitioner no. 1 that by virtue of the amendment in the Bihar, Co-operative Societies Act, 2010 all existing Fishermen Co-operative Societies of block level are to be merged in one Co-operative society and, therefore, it is not proper and possible to register proposed Hanuman Nagar Matasyajivi Sahyog Samiti, Ltd. Tisidih or any other society and it is also not possible to issue deemed registration certificate.

2. Petitioner no. 1 claims, herself, to be Chairman of Hanuman Nagar Matasyajivi Sahyog Samiti, Ltd. Tisidih whereas petitioners no. 2 to 7 are said to be members of aforesaid society. Petitioner no. 1 being chairman of the aforesaid society filed petition before the Assistant Registrar, Co-operative Societies, Darbhanga on 25.12.2002 for registration of the Hanuman Nagar Matasyajivi Sahyog Samiti, Ltd. Tisidih under Section 11 of the Bihar Co-operative Societies

Act, 1935. There were 305 members of the aforesaid society at the time of filing petition for registration of the aforesaid society. The Assistant Registrar, Co-operative Societies, Darbhanga sent the above stated petition along with annexed documents and bye laws to the Registrar, Co-operative Societies, Bihar, Patna vide letter no. 33 dated 16.01.2003 because only Registrar, Co-operative Societies was competent for registration of the society under the provision of Bihar Co-operative Societies Act, 1935 but petition for registration of the society was neither accepted nor refused within ninety days from the date of presentation of application for registration of above stated society. Thereafter, petitioner no. 1 filed miscellaneous case no. 07 of 2003 before the Hon'ble Minister of Co-operative, Bihar, Patna for grant of deemed registration certificate. Unfortunately, the aforesaid miscellaneous case no. 07 of 2003 was dismissed for default but restoration case no. 103 of 2007 was filed and thereafter, the aforesaid case was referred to the Registrar, Co-operative Societies, Bihar, Patna. The Registrar, Co-operative Societies, Bihar, Patna restored miscellaneous case no. 07 of 2003 and decided to issue deemed registration certificate of the aforesaid society and, accordingly, directed the Assistant Registrar, Co-operative Societies, Bihar, Patna to prepare the record of deemed registration certificate of the society of the petitioners. The Assistant Registrar, Co-operative Societies, Bihar, Patna requested the Assistant Registrar, Co-operative Societies, Darbhanga Division for sending the concerned record and thereafter, Assistant Registrar, Cooperative Societies, Darbhanga Division sent the concerned record to the Registrar, Co-operative Societies, Bihar, Patna on 17.06.2008 vide memo no. 141 dated 17.06.2008 but after that no action was taken and in the meantime, respondent no. 4 issued letter no. 6031 dated 02.11.2010 informing that all the societies of concerned block have already been merged in one society in the light of amendment in Section 11 of the Co-operative Societies Act, 1935 and, therefore, issuance of deemed registration certificate was not legal. The above stated letter no. 6031 dated 02.11.2010 has been annexed with this writ petition as Annexure-1. Further case of the petitioners is that the society of the petitioners was deemed to be registered under Section 11 of Bihar Co-operative Societies Act, 1935 but in spite of that the aforesaid society was not allowed to participate in the meeting of constitution of ad hoc committee of Hanuman Nagar Matasyajivi Sahyog Samiti, Ltd. Tisidih and constitution of ad hoc committee was against the provisions of letter no. 4217 dated 30.07.2010 (Annexure-6) and the subsequent action in pursuance to letter no. 4217 dated 30.07.2010 was also illegal and fit to be quashed. Accordingly, petitioners prayed for quashing the Annexure-1 and action taken contrary to letter no. 4217 dated 30.07.2010 and furthermore, petitioners prayed for issuance of direction to concerned authorities to allow the society of petitioners to be merged in the newly constituted block level society after granting deemed registration certificate by declaring the subsequent action in pursuance of Annexure-1 and contrary to Annexure-6 is void and illegal.

3. Counter affidavit has been filed on behalf of respondent no. 2 and it has been

pleaded that since the Bihar Cooperative Societies (Amendment) Act, 2010 and the Bihar Self Supporting Co-operative Societies (Amendment) Act, 2010 pertaining to the reorganization of Fishermen Co-operative Societies at block level was enforced from 02.08.2010 and guidelines have already been issued for such reorganization to the District Co-operative Officers by Co-operative department, it would be in opposition to principles and spirit of the aforementioned amendment and, therefore, petitioners were informed vide impugned letter no. 6031 dated 02.11.2010 about denial of the claim of deemed registration of the society. It has further been pleaded that petitioners have suppressed some material facts and they did not disclose that one review petition no. 199 of 2010 had been filed by the petitioners for quashing the registration certificate issued in favour of the Hanuman Nagar Matasyajivi Sahyog Samiti, Ltd. Dilahi and the aforesaid society has not been made party to this writ petition and, therefore, in absence of necessary party, the adjudication of the dispute is not possible in this writ petition.

4. During pendency of this writ petition, I.A. No. 2434 of 2013 was filed on behalf of Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti, Ltd. Dilahi through its Secretary, Rameshar Sahni praying therein to grant him permission to intervene in the present writ petition being impleaded as respondent to the writ petition. Similarly, I.A. No. 3357 of 2013 was filed on behalf of Hanuman Nagar Prakhand Matasyajivi Swablambi Sahkari Samiti, Ltd. Tisidih through its Chairwoman, namely, Pramila Devi praying therein to permit her to intervene in this writ petition being impleaded as respondent to the writ petition. Both the aforesaid interlocutory applications were allowed by this court vide order dated 01.07.2013.

5. The case of Hanuman Nagar Prakhand Matasya Jivi Sahyog Samiti, Ltd. Dilahi is that the aforesaid society was registered on 17.02.2011. The aforesaid society was result of reorganization process initiated in pursuant to section 8(1)(b) and Section 11(b) of the Bihar Co-operative Societies Act, 1935 and proviso to Section 11(4) of the Bihar Self Supporting Co-operative Societies Act, 1996. Further case of the aforesaid intervener is that only Hanuman Nagar Prakhand Matasya Jivi Swablambi Sahkari Samiti, Ltd. Tisidih and Hanuman Nagar Prakhand Matasya Jivi Sahyog Samiti, Ltd. Dilahi were in existence on 02.08.2010 and after coming into force of amendment in 2010, the aforesaid societies were merged together to form a new society and thereafter, the intervener's society came into existence on 17.02.2011 as a result of merger and according to amendment, no other Fishermen Co-operative society can now be registered in the Hanuman Nagar block. Further case of the intervener is that at the time of reorganization, the society of petitioners was not in existence as no registration certificate had been issued to the above stated society and, therefore, the society of the petitioners was not entitled to be merged. Furthermore, the case of the aforesaid intervener is that petitioners were members of Hanuman Nagar Matasyajivi Swalambi Samiti, Ltd. Tisidih and after merger, the petitioners became members of society of the intervener and their

name entered in the voter list.

6. The case of second intervener, namely, Hanuman Nagar Prakhand Matasyajivi Swalambi Sahkari Samiti, Ltd. Tisidih is that the aforesaid society was duly registered under Bihar Self Supporting Co-operative Societies Act, 1996 in the year 2000 and at the relevant time, Hanuman Nagar Matasya Jivi Sahyog Samiti, Ltd. Tisidih, the society of petitioners, and Hanuman Nagar Prakhand Matasya Swalambi Samiti, Ltd. Tisidih, society of present intervener were functional and Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti, Ltd., Dilahi was also functional at the time of reorganization. The registration of Hanuman Nagar Matasya Jivi Sahyog Samiti, Ltd. Dilahi was challenged on the ground of fraud in Review Case No. 199 of 2010. Further case of the intervener is that neither the members of society of writ petitioners nor members of society of intervener were allowed to become the members of merged society. Furthermore, case of the intervener Pramila Devi is that Hanuman Nagar Block was created from carving out few areas from erstwhile Gaighat Block and the writ petitioners formed society and applied for registration on 25.12.2002 but in the meantime, the intervener, Hanuman Nagar Prakhand Matasya Sahyog Samiti Limited, Dilahi succeeded in obtaining registration certificate of the aforesaid society on 06.03.2003 granted by the Assistant Registrar, Co-operative Societies, Darbhanga Division. Thereafter, the writ petitioners filed miscellaneous case no. 07 of 2003 for issuance of certificate of registration as well as for cancellation of registration of society of applicant of I.A. No. 2434 of 2013. The matter came before the Registrar, Co-operative Societies, Bihar, Patna who allowed the prayer of writ petitioners and accordingly, directed for issuance of deemed registration certificate to society of petitioners and so far as cancellation of registration certificate of society of applicant of I.A. No. 2434 of 2013 was concerned, the Registrar, Co-operative Societies, Bihar, Patna vide order dated 26/28.11.2007 held that the registration of the society of applicant of I.A. No. 2434 of 2013 was void ab initio. Furthermore, the case of above stated intervener is that no certificate of registration was issued to the writ petitioners till the commencement of amendment of 2010 and the society of intervener remained registered and functional. However, the applicant of I.A. No. 2434 of 2013 being aggrieved by order dated 26/28.11.2007 passed in Review Case No. 56 of 2003 preferred CWJC No. 16795 of 2007 before this court but the aforesaid CWJC No. 16795 of 2007 was dismissed by a co-ordinate bench of this court vide order dated 31.07.2009 against which L.P.A. was filed which was, too, dismissed but at the time of dismissal of L.P.A. it was brought to notice of the court that petitioners of the aforesaid writ petition had already filed a fresh application for registration of society before the Registrar, Co-operative Societies, Bihar, Patna and thereafter, this court observed that the Registrar, Co-operative Societies, Bihar, Patna shall make endeavour to decide the issue of registration of the society at the earliest preferably within a period of sixty days from the date of communication or production of a copy of that order. Further case of the aforesaid intervener is that as a matter of fact, the applicant of I.A. No. 2434 of

2013 had not filed any fresh application for registration of his society before the Registrar, Co-operative Societies, Bihar, Patna prior to dismissal of L.P.A. but a wrong submission was made before the court and as a matter of fact, after disposal of L.P.A. the applicant of I.A. No. 2434 of 2013 managed the officials and got filed the application for registration in back date and, thereafter, the Registrar, Co-operative Societies, Bihar, Patna without taking note of sprit of order passed in L.P.A. granted registration certificate to applicant of I.A. No. 2434 of 2013 on 14.07.2010 overlooking this fact that two societies could not have been registered for one block. The grant of aforesaid registration certificate was challenged by the writ petitioners in miscellaneous case no. 157 of 2010 but the same was rejected by the Registrar, Co-operative Societies, Bihar, Patna vide order dated 09/10.10.2010 and, thereafter, writ petitioners filed Review Petition No. 199 of 2010 against the above stated order. The aforesaid Review Petition No. 199 of 2010 was referred to the Hon''ble Minister which was numbered before the Hon''ble Minister as Review Case No. 01 of 2011. Subsequently, the petitioner no. 1 was won over by the members of society of applicant of I.A. No. 2434 of 2013 and, thereafter, members of society of writ petitioners filed a petition for intervention before the Hon''ble Minister but the petition of members of society of writ petitioners was rejected and petitioner no. 1 was permitted to withdraw the case. Thereafter, members of society of writ petitioners preferred CWJC No. 707 of 2013 which was allowed and order dated 12.06.2012 passed by the Hon''ble Minister in Review Case No. 01 of 2011 was quashed and a direction was issued to decide the Review Case No. 01 of 2011 on its own merit after hearing the parties. Further case of the intervener is that at the time of reorganization, the society of intervener was functional and the society of applicant of I.A. No. 2434 of 2013 was registered on 17.02.2011 but society of present intervener was not permitted to be merged whereas society of applicant of I.A. No. 2434 of 2013 was ordered to be merged.

7. During pendency of this writ petition, I.A. No. 1844 of 2014 has been filed on behalf of the petitioners for bringing certain new facts on record which were cropped up during pendency of the instant writ petition. It has been pleaded in the aforesaid interlocutory application that petitioner no. 1 Kavita Devi had filed Review Case No. 199 of 2010 before the Registrar, Cooperative Societies, Bihar, Patna who by his order dated 28.02.2011 referred the matter to the Co-operative Minister to decide the matter under Section 11(4) of Bihar Co-operative Societies Act on the ground that when the deemed registration certificate was ordered to be granted to the petitioners on 02.05.2008 under what circumstances the registration of Hanuman Nagar Prakhhand Matasyajivi Sahyog Samiti Limited was done on 14.07.2010. As stated above, the aforesaid review case was closed vide order dated 12.06.2012 on the ground of withdrawal petition filed on behalf of the petitioner no. 1. The above stated order dated 12.06.2012 passed in the aforesaid review case was challenged before this court in CWJC No. 707 of 2013 by some members of managing committee of society of petitioners and a coordinate bench of this court vide order dated 16.01.2013 directed the Minister

in charge to decide the review petition on merit. Subsequently, the Chairman cum Member Board of Revenue, Bihar, Patna was authorized to hear the above stated review case and accordingly, case no. 85 of 2013 was registered. Vide order dated 14.02.2014, the learned Chairman cum Member Board of Revenue, Bihar, Patna without considering the merit of aforesaid case not only refused to issue deemed registration certificate to the society of the petitioners but also held that registration of Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited was valid. The order dated 14.02.2014 passed in Case No. 85 of 2013 has been annexed as Annexure-12 to the I.A. No. 1844 of 2014.

8. From the above stated pleadings of the parties it would appear that the present Hanuman Nagar block was carved out from erstwhile Gaighat block. The Hanuman Nagar Prakhand Matasyajivi Swalambi Samiti Limited, Tisidih, Darbhanga was a duly registered society under the Bihar Self Supporting Co-operative Societies Act, 1996 and the aforesaid society was registered in the year 2000 and was functional within the area of erstwhile Gaighat block as per its bye-laws. Furthermore, it would appear that after carving out Hanuman Nagar block from Gaighat block, the present writ petitioners along with other members formed a new society under the Chairmanship of petitioner no. 1 and applied for its registration on 25.12.2002 under the provisions of Bihar Co-operative Societies Act, 1935 before the Assistant Registrar, Co-operative Societies, Darbhanga Division, Darbhanga who vide his letter no. 33 dated 16.01.2003 forwarded the registration application and other documents to Registrar, Cooperative Societies, Bihar, Patna. The matter of registration of society of writ petitioners remained pending for more than ninety days and, thereafter, Misc. Case No. 07 of 2003 was filed on behalf of aforesaid society before the concerned Minister seeking direction upon the Registrar, Co-operative Societies, Bihar, Patna to issue deemed registration certificate under the provisions of Section 11(3) of the Bihar Co-operative Societies Act, 1935 as well as for cancellation of registration of Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi. The concerned Minister disposed of Misc. Case No. 07 of 2003 giving direction to the Registrar, Co-operative Societies, Bihar, Patna to pass a reasoned order on both the above stated issues. The Registrar, Co-operative Societies, Bihar, Patna vide order dated 03/12-03-2008 allowed the application of society of writ petitioners on the point of issuance of deemed registration certificate and directed to call for the original record from the office of Assistant Registrar, Co-operative Societies, Darbhanga and to place the draft of certificate of registration before him. The concerned record was sent to appropriate authority vide letter no. 141 dated 17.06.2008 but the issuance of deemed registration certificate to the society of petitioners was remained pending and in the meantime, sub-section (1b) was added in Section 8 of Bihar Co-operative Societies Act, 1935 in the year 2010. The above stated new sub-section (1b) of the aforesaid Act says that Notwithstanding anything contrary contained in Bihar Co-operative Societies Act, 1935 or any other Bihar Act or Rules framed thereunder or bye-laws of a Cooperative Society or class of Co-

operative Societies or any order issued by the State Government or Registrar of Co-operative Societies, there shall be only one registered Fishermen Cooperative Society in a Block with its area of operation extending over the whole Geographical limit of the Block.

9. Similarly, a new Section 11B was also added by Act of 22.08.2010 and the said Section 11B says that Notwithstanding anything contrary contained in any provision of Bihar Act VI of 1935 or any other Act, Rules made thereunder and Bye-laws of a registered Co-operative Society or class of Co-operative Societies, any order issued by the State Government or Registrar, Cooperative Societies, all existing Fishermen Co-operative Societies at block level, area of operation being confined to the Geographical limit of the Block shall stand merged in one Cooperative society and shall be deemed to be registered as a new Co-operative society under Bihar Act VI of 1935, and the Registrar, Co-operative Societies shall issue registration certificate;

Provided that on such reorganization, all members of the existing Co-operative Society or Societies registered under the Bihar Act VI of 1935 or Bihar Self Supporting Co-operative Societies Act, 1996 shall be deemed to have become members of such reorganized society and shall have all rights and liabilities as members of the said society;

Provided further that on such reorganization, for managing the affairs of the new society and all such affiliating societies of which the Fishermen Co-operative Society is a member, the Registrar/Government shall constitute an ad hoc Managing Committee for a period not exceeding one year, within which the new Managing Committee shall be constituted after elections."

10. On the basis of aforesaid new provisions of the Bihar Co-operative Societies Act, 1935, the Joint Registrar, Cooperative Societies, Bihar, Patna vide his letter no. 6031 dated 02.11.2010 informed the petitioner no. 1 that in view of the above stated new provisions, deemed registration certificate in favour of Hanuman Nagar Prakhanda Matasyajivi Sahyog Samiti Limited, Tisidih cannot be issued. The above stated letter has been annexed as Annexure-1 and has been impugned in this writ petition.

11. It is not out of place to mention here that intervener of I.A. No. 2434 of 2013 got registered his society on 06.03.2003 and the registration of the aforesaid society was challenged in Misc. Case No. 07 of 2003. The learned Registrar vide his order dated 26/28-11-2007 held that registration of society of intervener of I.A. No. 2434 of 2013 was ab initio void. The aforesaid order was passed in Review Case No. 56 of 2003 which has been annexed as Annexure-3 to the counter affidavit. The intervener of I.A. No. 2434 of 2013 preferred CWJC No. 16795 of 2007 before this court against the order dated 26/28-11-2007 passed in Review Case No. 56 of 2003 but the aforesaid CWJC No. 16795 of 2007 was dismissed by a coordinate bench of this court vide order dated 31.07.2009 which was challenged in L.P.A. but the same was too dismissed. At the time of dismissal

of L.P.A. it was informed to Division Bench of this court that a fresh application for registration of society of intervenor (I.A. No. 2434 of 2013) has already been filed before Registrar, Co-operative Societies, Bihar, Patna and thereafter Division Bench of this court directed the Registrar, Cooperative Societies, Bihar, Patna to decide the issue of registration of the society within a period of sixty days. Thereafter, in the light of direction issued in L.P.A. the Registrar, Co-operative Societies, Bihar, Patna issued registration certificate to the society of intervenor (I.A. No. 2434 of 2013) on 14.07.2010. Against the issuance of aforesaid registration certificate, the writ petitioners filed Misc. Case No. 157 of 2010 for declaring the registration of intervenor's society (I.A. No. 2434 of 2013) as ab initio void on several grounds but the Misc. Case No. 157 of 2010 was rejected by Registrar, Co-operative Societies, Bihar, Patna vide order dated 09/10.10.2010 against which Review Petition No. 199 of 2010 was filed and the aforesaid review petition was forwarded to the court of concerned minister under Section 11(4) of Bihar Co-operative Societies Act, 1935 vide order dated 28.02.2011. The aforesaid review petition was numbered before the Minister as Review Case No. 01 of 2011 but during pendency of the aforesaid review case, petitioner no. 1 filed a withdrawal petition in the aforesaid Review Case No. 01 of 2011 and when the aforesaid fact came to the notice of other members including intervenor of I.A. No. 3357 of 2013, they sought permission to contest the aforesaid case but they were not permitted by the concerned Minister and petitioner no. 1 of instant writ petition was permitted for withdrawal of above stated Review Case No. 01 of 2011 vide order dated 12.06.2012. The intervenor of I.A. No. 3357 of 2013 and others filed CWJC No. 707 of 2013 against the above stated order dated 12.06.2012 passed in Review Case No. 01 of 2011 and a coordinate bench of this court quashed the order dated 12.06.2012 passed in Review Case No. 01 of 2011 and permitted the intervenor-petitioners to contest the aforesaid Review Case No. 01 of 2011. Subsequently, the aforesaid Review Case No. 01 of 2011 was converted into Misc. Case No. 85 of 2013 which was decided by the Chairman cum Member Board of Revenue, Bihar, Patna in the manner as I have already stated above.

12. Learned counsel appearing for the petitioners submitted that admittedly, petitioners had applied on 25.12.2002 for registration of their society before the Joint Registrar who later on, sent the application for registration along with concerned documents to Registrar, Co-operative Societies, Bihar, Patna on 16.01.2003 but thereafter, no action was taken and then petitioners preferred Misc. Case No. 07 of 2003 before the concerned Minister under Section 11(3) of Bihar Co-operative Societies Act, 1935 for issuance of deemed registration certificate in respect of their society as ninety days had already been passed from the date of making of registration application for registration of the aforesaid society. Learned counsel for the petitioners further submitted that Section 11(2) of Bihar Co-operative Societies Act, 1935 clearly says that if the registration is not refused within ninety days from the date of making of application for registration, the society shall be deemed to be registered. He

further submitted that in the present case, admittedly, no information regarding the refusal of registration of the society of the petitioners was given within ninety days and after expiry of period of ninety days, society of petitioners preferred an appeal under Section 11(3) of Bihar Co-operative Societies Act, 1935 before the appropriate authority and thereafter, the Registrar, Co-operative Societies, Bihar, Patna vide order dated 03.03.2008/12.03.2008 passed in Case No. 103 of 2007 (Annexure-2) ordered for issuance of registration certificate in favour of society of the petitioners. He further submitted that according to Section 11(2) of Bihar Co-operative Societies Act, 1935, after expiry of ninety days the society of the petitioners was deemed to be registered and there was only formality for issuance of deemed registration certificate for which Misc. Case No. 07 of 2003 was filed under Section 11(3) of Bihar Co-operative Societies Act, 1935. He further submitted that prior to insertion of sub-section (1b) of Section 8 as well as Section 11B of Bihar Co-operative Societies Act, 1935, the society of the petitioners had already been deemed to be registered in view of specific provision of Section 11(2) of Bihar Co-operative Societies Act, 1935 and, therefore, after commencement of Section 11B of Bihar Co-operative Societies Act, 1935, the society of the petitioners ought to have been merged in the newly constituted Co-operative society and refusal of issuance of deemed registration certificate in favour of the society of the petitioners vide letter no. 4217 dated 30.07.2010 was illegal and without jurisdiction. He further submitted that the issue before the Chairman cum Member Board of Revenue, Bihar, Patna was only about the validity of registration of society of intervener of I.A. No. 2434 of 2013 but the learned Chairman cum Member Board of Revenue, Bihar, Patna vide order dated 14.02.2014 wrongly held that the deemed registration certificate could not have been issued to the society of the petitioners in view of insertion of Section 8(1b) and 11B of Bihar Co-operative Societies Act, 1935 because there was provision for only one Co-operative society in a block.

13. Learned counsel for the petitioners further submitted that in the year 2011, 97th amendment of the Constitution was brought and new part IX-B has been inserted by the 97th Constitution Amendment Act and according to Article 243-ZI, the State may make provisions with respect to the incorporation, regulation, and winding up of Co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning. He further submitted that by the above stated amendment in Constitution, the restriction of registration of only one society in a block has been lifted and admittedly, after the aforesaid amendment in Constitution, the State Government has not brought any State amendment up till now and, therefore, the aforesaid 97th amendment of the Constitution shall prevail over the amendment of 2010 of Co-operative Societies Act, 1935. He further submitted that when the society of the petitioners had already been deemed to be registered in the year 2002 itself, there was no occasion for issuance of registration certificate in respect of society of intervener of I.A. No. 2434 of 2013. He also submitted that moreover, the registration certificate issued

in the year 2003 in favour of society of intervener of I.A. No. 2434 of 2013 had already been cancelled by the Registrar and the order of Registrar, Co-operative Societies, Bihar, Patna was upheld up to this court. He further submitted that Division Bench of this Court granted liberty to Registrar, Co-operative Societies, Bihar, Patna to pass order on the registration of society of intervener of I.A. No. 2434 of 2013 in accordance with law but the Registrar failed to take note of this fact that the society of the petitioners was already in existence in the concerned block and in view of new amendment of 2010, the Registrar had got no authority to issue registration certificate to the society of intervener of I.A. No. 2434 of 2013 and similarly, the Chairman cum Member Board of Revenue, Bihar, Patna also failed to take notice of this fact that society of intervener of I.A. No. 2434 of 2013 was not in existence and it was society of the petitioners which ought to have been merged in newly formed society but it is surprisingly enough that the society of the petitioners was not permitted to be merged in newly formed society in view of the provisions of amendment Act of 2010 and accordingly, the members of society of petitioners were debarred to become member of newly constituted society and their legal right to elect the managing committee of newly formed society was snatched away. He further submitted that respondent no. 7 declared election of managing committee of newly formed society during pendency of this writ petition though this Court vide order dated 30.09.2011 had directed the parties to the present writ petition to maintain status quo. On the basis of above stated submission he prayed for quashing the letter no. 6031 dated 02.11.2010 (Annexure-1) and for issuance of deemed registration certificate for the purpose of merger of the society of the petitioners in accordance with amended provisions of Bihar Co-operative Societies Act, 1935 and also for quashing the order dated 14.02.2014 passed by the Chairman cum Member Board of Revenue, Bihar, Patna in Case No. 85/2013.

14. On the other hand, learned counsel appearing for the respondents submitted that no doubt, the Constitution of India was amended by the 97th amendment in the year 2011 but by the aforesaid amendment, it has, nowhere, stated that there shall be more than one Co-operative societies and, therefore, the amendment of 2010 made in the Bihar Co-operative Societies Act, 1935 is not inconsistent with the 97th amendment of the Constitution. He further submitted that Chairman cum Member Board of Revenue, Bihar, Patna had already decided all the issues involved in this writ petition vide his order dated 14.02.2014 passed in Misc. Case No. 85/2013 and the aforesaid order has been passed by the Chairman cum Member Board of Revenue, Bihar, Patna at the direction of this court and if the petitioners are aggrieved by the order of Chairman cum Member Board of Revenue, Bihar, Patna, they may file a separate writ petition. He further submitted that registration of society of intervener of I.A. No. 2434 of 2013 was done at the direction of this court prior to amendment of 2010 and moreover, after coming into force of amendment of 2010, only one society has to be registered in a block and the society of intervener of I.A. No. 2434 of 2013 has already been registered and, therefore, no deemed registration certificate can be

issued in favour of society of the petitioners.

15. Having heard the contentions of the parties as well as having perused the pleadings available on the record, I find that the question involved in this writ petition as to whether the concerned authorities were bound to issue deemed registration certificate in favour of society of the petitioners and as to whether the society of the petitioners was entitled to be merged in newly constituted society after coming into force of amendment of 2010 in the Bihar Co-operative Societies Act, 1935.

16. Certain facts are admitted in this case. It is an admitted position that petitioners applied for registration of Hanuman Nagar Prakhanda Matasyajivi Sahyog Samiti Limited, Tisidih on 25.12.2002 before the Assistant Registrar, Co-operative Societies, Darbhanga under the provision of Section 11 of Bihar Co-operative Societies Act, 1935. The Assistant Registrar, Cooperative Societies, Darbhanga sent the above stated petition to Registrar, Co-operative Societies, Bihar, Patna on 16.01.2003 but no order on the petition of the petitioners was passed within ninety days from the date of submission of above stated application.

17. Here, I would like to refer Section 11(2) of Bihar Co-operative Societies Act, 1935 which says that-If in the opinion of the Registrar, the conditions stipulated under sub-section (1) above appear not to have been complied with, within ninety days of the presentation of the application before him, he shall record reasons for refusal and refuse to register the society and send this decision by registered post to the organizer/promoter. In the event of the refusal not being sent within the stipulated period, the Society shall be deemed registered and in such a situation the Registrar within one month thereafter shall send by registered post, the registration certificate for deemed registration alongwith original copy of the registered bye-laws duly sealed and signed.

18. From perusal of the aforesaid provision, it goes to show that if the order of refusal is not passed on the petition applied for registration of the Society, the Society shall be deemed registered and in the aforesaid circumstance, the Registrar shall be bound to send deemed registration certificate along with original copy of the registered bye-laws within a month after expiry of above stated ninety days. It is an admitted position that petitioners neither received any refusal order nor any deemed registration certificate within the prescribed period. Thereafter, petitioners preferred an appeal before the State Government under Section 11(3) of Bihar Co-operative Societies Act, 1935 which says that if deemed registration certificate is not refused in that event an appeal shall lie and admittedly, within the prescribed period of limitation, petitioners preferred Misc. Case No. 07/2003 before the concerned Minister and the aforesaid Misc. Case No. 07/2003 was allowed on 03.03.2008/12.03.2008 by the Registrar, Co-operative Societies, Bihar, Patna, who directed the Assistant Registrar, Co-operative Societies, Bihar, Patna to prepare the draft of deemed registration certificate in respect of the Society of the petitioners but the aforesaid order of

Registrar, Co-operative Societies, Bihar, Patna could not take shape and in the meantime, letter no. 6031 dated 02.11.2010 was sent to the petitioners and it was informed to them that due to insertion of sub-section (1b) of Section 8 as well as new Section 11B in Bihar Co-operative Societies Act, 1935, the deemed registration certificate in respect of the Society of the petitioners could not have been issued. Admittedly, the aforesaid amendments through Amendment Act 2010 were made effective from 02.08.2010 and much prior to commencement of the aforesaid amendments, the Registrar, Co-operative Societies, Bihar, Patna had already passed order for issuance of deemed registration certificate in respect of Society of the petitioners. Furthermore, the above stated amendments do not have retrospective effect and, therefore, if prior to coming into force of the aforesaid amendments, the Society of petitioners had already deemed to be registered under Section 11(2) of Bihar Co-operative Societies Act, 1935, the Registrar, Co-operative Societies, Bihar, Patna had no authority of refusal to issue deemed registration certificate to the society of the petitioners taking aid of above stated amendments and on contrary, the Registrar, Co-operative Societies, Bihar, Patna was bound to issue deemed registration certificate in favour of Society of the petitioners.

19. On conjoint reading of sub-section (1b) of Section 8 and Section 11B of Bihar Co-operative Societies Act, 1935, it is apparent that now at the block level, within a block and for the entire geographical area of block, there should be only one Fisherman Co-operative society and all the Fishermen Co-operative societies operating in a block have to be amalgamated and after amalgamation of all the Fishermen Co-operative societies, there would be an ad hoc management committee for a period of one year appointed by the Registrar because upon amalgamation, different number of members would come in different societies but after amalgamation when the role of members are finalized, then within one year fresh elections have to be held and then a new managing committee have to be constituted for the amalgamated Co-operative society.

20. In the present case, admittedly, the application for registration of society of the petitioners was sent in the year 2002 but within ninety days of making application for registration of society neither any refusal order nor any deemed registration certificate was received to the petitioners and, therefore, in view of Section 11(2) of Bihar Co-operative Societies Act, 1935, the society of the petitioners had already been deemed to be registered sometime in the year 2003. Moreover, the Registrar, Co-operative Societies, Bihar, Patna also passed order for issuance of deemed registration certificate in Misc. Case No. 07/2003 and, therefore, it is apparent that before coming into force of sub-section (1b) of Section 8 and Section 11B through Amendment Act, 2010, the society of the petitioners was in existence and according to Section 11B, the society of petitioners was entitled to be merged into new Co-operative society and the members of society of the petitioners had right to elect the managing committee of newly formed society but the aforesaid valuable right of members of society of the petitioners was snatched away by the concerned respondents by issuance of

letter no. 6031 dated 02.11.2010.

21. It is admitted case of the parties that Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi, the society of intervener-applicant of I.A. No. 2434/2013, was result of reorganization process initiated in pursuant to Section 8(1b) and Section 11B of Bihar Co-operative Societies Act, 1935 and proviso to Section 11(4) of Bihar Self Supporting Co-operative Societies Act, 1996. It is also an admitted position that the Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi was granted registration certificate on 06.03.2003 and after grant of registration certificate to Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi, the present writ petitioners filed Misc. Case No. 07/2003 for issuance of deemed registration certificate to their society and also for cancellation of registration certificate of Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi. The Registrar, Co-operative Societies, Bihar, Patna vide his order dated 26/28-11-2007 held that the registration of Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi was ab initio void and the aforesaid finding of the Registrar, Co-operative Societies, Bihar, Patna affirmed up to the Division Bench of this court and the aforesaid finding attained its finality. However, the LPA court granted liberty to Registrar, Co-operative Societies, Bihar, Patna to decide the issue of registration of the society of intervener-applicant of I.A. No. 2434/2013 because it was brought to the notice of Division Bench of this Court that during pendency of above stated LPA, a fresh petition for registration of society had been filed. It is also an admitted position that again, registration certificate was granted to Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi on 14.07.2010 i.e. prior to coming into force of Amendment Act 2010 because admittedly, the Amendment Act 2010 was made applicable from 02.08.2010. Therefore, it is apparent that the Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi was also in existence prior to coming into force of Amendment Act 2010. The grant of registration certificate to Hanuman Nagar Prakhand Matasyajivi Sahyog Samiti Limited, Dilahi was challenged before the competent authority but admittedly, the registration certificate of the aforesaid society was not cancelled by the competent authority. It is also an admitted position that prior to Amendment Act 2010, there was Hanuman Nagar Prakhand Matasya Swalambi Samiti Limited, Tisidih for entire Gaighat block and some members of aforesaid Hanuman Nagar Prakhand Matasya Swalambi Samiti Limited, Tisidih including the petitioners formed new society and applied for registration. Therefore, it would appear from the aforesaid facts that prior to enforcement of Amendment Act 2010, there were three Fishermen Co-operative societies in existence. According to Section 11B of the Act, all the existing Fishermen Co-operative societies at block level had to be merged but admittedly, at the time of reorganization of new society, the society of the petitioners was left to be merged. Therefore, the members of society of petitioners were debarred to elect the members of managing committee of newly formed society. Therefore, in my view, impugned letter no. 6031 dated 02.11.2010 issued by respondent no. 4 at the direction of respondent no. 3

contained at Annexure-1 to the writ petition as well as order dated 14.02.2014 passed in Case No. 85/2013 so far as it relates to refusal of grant of deemed registration certificate to the society of petitioners is concerned, the same cannot stand in the eye of law because letter no. 6031 dated 02.11.2010 as well as order dated 14.02.2014 passed in Case No. 85/2013 have been passed in complete violation of mandatory provisions of Bihar Co-operative Societies Act, 1935.

22. Accordingly, this writ petition stands allowed and the impugned letter no. 6031 dated 02.11.2010 as well as order dated 14.02.2014 passed in Case No. 85/2013 to the extent of refusal of issuance of deemed registration certificate to the society of the petitioners are, hereby, quashed and the respondents/concerned respondents are directed to issue deemed registration certificate to the society of petitioners in accordance with law and also take fresh step in the light of sub-section (1b) of Section 8 and Section 11B of the Bihar Co-operative Societies Act, 1935 in respect of merger of existing Fishermen Co-operative Societies at the time of coming into force of Amendment Act 2010 and ensure that all the Fishermen Co-operative Societies, which were in existence at the time of commencement of Amendment Act, 2010, should be merged and a new Co-operative Society should be formed and furthermore, the concerned authorities should constitute a fresh ad hoc Managing Committee who shall manage the affairs of new society and, thereafter, the newly constituted ad hoc committee should get election done for permanent Managing Committee. All the aforesaid steps must be completed within six months from the date of receipt/production of copy of this order.