

(2003) 06 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3239 of 2002

Paika Horo and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Multi-State Cooperative Societies Act, 2002 — Section 103
Reorganisation Act, 2000 — Section 65, 66

Citation : (2003) 3 JCR 117

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and R.R. Mishra, for the Appellant; A. Allam, M.K. Sinha, JC to AAG, Bimal Kumar and K.M. Verma, for respondent Nos. 5 and 6 and Vijay Gopal, for the Respondent

Judgement

1. This writ petition is filed by the employees of the Bihar State Scheduled Castes Co-operative Development Corporation Limited (herein after referred to as the Bihar Co-operative Development Corporation). The Bihar State Co-operative Development Corporation has offices spread over the entire State of Bihar before its bifurcation. Thus, it had officers in its service working within the areas now falling within the State of Jharkhand after the Bihar Reorganisation Act, 2000 came into force with effect from 15.11.2000. The salaries of the employees of all the Branches were being paid by the Bihar State Co-operative Development Corporation. Payment of salaries of the employees and the offices located with the divided State of Jharkhand was also being made by the Bihar State Co-operative Development Corporation for about one year after 15.11.2000. The payments were being made from the Head-office at Patna (now within the State of Bihar).

2. After coming into existence of the State of Jharkhand, the Jharkhand State Tribal Co-operative Development Corporation Limited was registered under the Cooperative Societies Act to work for the welfare of the Scheduled Tribes in the

State of Jharkhand. There was no corresponding formation of a Scheduled Castes Co-operative Development Corporation for the State of Jharkhand. But the offices or branches of the Bihar State Co-operative Development Corporation continued to function in the State of Jharkhand. The Jharkhand State Tribal Development Corporation did not provide for the payment of salaries of the employees/officers of those branches. The Bihar State Co-operative Development Corporation also stopped paying them salaries, since, apparently, a view was taken that it was for the State of Jharkhand to make arrangements for paying them their salaries. Whatever it be, the result was that the employees of the Branch Offices of the Bihar State Co-operative Development could not and did not receive their salaries. It is in that context that the employees have filed the present writ petition.

3. When the writ petition came up, this Court directed the respondents who had appeared to file their counter-affidavits. This Court also clarified that the pendency of the case will not stand in the way of the State of Jharkhand and the Jharkhand State Tribal Development Corporation sorting out the matter. This Court directed that the case be placed for admission on 3.10.2002. On 3.10.2002, the matter was further adjourned to 21.11.2002, this Court clarifying that the pendency of the case will not stand in the way of the Jharkhand State Tribal Cooperative Development Corporation releasing funds for payment of salaries to the employees of the Bihar Co-operative Development Corporation posted in offices situated in the territory of Jharkhand. On 21.11.2002, this Court took note of the submission of learned counsel for the petitioners that the situation was covered by Sections 65 and 66 of the Bihar Reorganization Act, 2000 and that for resolving the issues between the two States, the Government of India could issue an appropriate direction even in the absence of any one of the bifurcated State approaching the Central Government in that regard. This Court felt that it would be appropriate to hear the concerned officials of the Union of India and consequently called upon the Secretary, Ministry of Social Justice and Empowerment, Government of India, to appear and clarify the position. This Court also ordered the Government of India to issue appropriate directions to the successor States of Bihar and Jharkhand as per Section 65 read with Section 66 of the Bihar Reorganization Act, 2000. The matter was adjourned to 13.12.2002. On that date, at the request of the Union of India, the case was adjourned to 14.2.2003. The Court also directed that meanwhile the Central Government will determine whether Bihar Co-operative Development Corporation or the Jharkhand State Tribal Development Corporation was to pay the salary of the petitioners. A time of one month was fixed for taking the decision. At that stage, the Secretary, Ministry of Social Justice and Empowerment, Government of India had submitted before this Court that it was doubtful whether Section 65 of the Bihar Reorganization Act, 2000 was applicable in the case of Co-operative Societies, like the Bihar Co-operative Development Corporation or the Jharkhand Scheduled Tribes Co-operative Development Corporation. No decision was taken on that aspect and the matter was adjourned

to 20.2.2003. That day, learned counsel for the petitioner contended that Section 65 was attracted. Counsel for the Bihar Co-operative Development Corporation reiterated the contention that Section 65 of the Bihar Reorganization Act, 2000 was not applicable. In view of this question being raised, the learned Single Judge on 20.2.2003, adjourned the case for being heard by a Division Bench. Thus, the case has come up before us.

4. We may notice that meanwhile, an interim decision was taken by the Central Government and a direction was issued to the effect that the Bihar Co-operative Development Corporation should pay the salaries of the petitioners till such time as the assets and liabilities of the Bihar Cooperative Development Corporation between the successor State of Bihar and Jharkhand.

5. Before us, the learned counsel for the petitioners submitted that since the Central Government had already passed an order in terms of Section 65 of the Bihar Reorganization Act, 2000, all that remains was to issue a formal direction to the Bihar State Scheduled Castes Co-operative Development Corporation [Respondent No. 7] to pay the salaries of the petitioners until the assets and liabilities are divided between the two States. Counsel for respondent No. 7, the Bihar State Scheduled Castes Co-operative Development Corporation, reiterated the contention that Section 65 of the Bihar Reorganization Act, 2000 was not applicable in case of Co-operative Societies and on the reorganization of the State, respondent No. 7 Co-operative Society, an apex society, was controlled by Section 103 of the Multi State Co-operative Societies Act, 2002. Under that provision, where by virtue of the provision in Part II of the State Reorganization Act, 1956 or any other enactment relating to the reorganization of States, any Co-operative Society which immediately before the day on which the reorganization took place, had its objects confined to one State became as from that day, a Multi State Co-operative Society, it should be deemed to be a Multi State Cooperative Society registered under the provisions of Multi State Co-operative Societies Act, 2002 and the bye-laws of the Society in so far as they are not inconsistent with the provisions of the Act, shall continue to be in force until altered or rescinded. According to counsel for respondent No. 7, a scheme for re-constitution and reorganization of the Bihar Co-operative Development Corporation had to be undertaken in terms of Section 103(2) of the Multi State Co-operative Societies Act and without the same being got done and the transfer of assets and liabilities or division of assets and liabilities taking place, no direction can be given to respondent No. 7 for paying the salaries, either by the Central Government in purported exercise of powers u/s 65 of the Bihar Reorganization Act, 2000 or by this Court as claimed by the petitioners. It cannot be denied that on the Bihar Reorganization Act, 2000 coming into force and on reorganization of the states of Bihar and Jharkhand, Section 103 of the Multi State Co-operative Societies Act, 2002 has come into operation. The real remedy appears to be to get a scheme settled u/s 103 of that Act.

6. Learned counsel for the Bihar Cooperative Development Corporation submitted

that after reorganization of the State, no funds are being made available to the Bihar Co-operative Development Corporation in respect of its officers in the State of Jharkhand by respondent No. 10 by the Central Government and that the entire funds are being made available, including funds to be used that are being used for the Scheduled Castes Co-operative Development Corporation to the Jharkhand State Tribal Development Corporation and that the Co-operative Development Corporation cannot make available funds for payment of salaries to the employees of the Bihar Co-operative Development Corporation working in the State of Jharkhand. This submission appears to be correct. Nothing was brought to our notice to show that any amount was, in fact, being paid either by the Jharkhand Tribal Development Corporation or by respondent No. 10 to the Scheduled Castes Development Corporation. But the stand of the Jharkhand Tribal Development Corporation is that the funds made available to it by the Central Government was intended for the benefit of the scheduled tribes and it could not be used for the welfare of the scheduled castes. It is in the context of these controversies raised, that the Central Government have proceeded to invoke Section 65 of the Bihar Reorganizations Act, to direct the Bihar Co-operative Development Corporation to pay the salaries of its employees working in its offices within the State of Jharkhand. In the circumstances, we feel that it cannot be said that the stand adopted by the Union Government is unjust. After all, the arrangement is also Intended to be only an interim arrangement. But it is necessary for the Union of India and respondent No. 10 to consider whether funds in that behalf should not be provided and what part of the fund should be made available to the respondent No. 9 for the welfare of the schedule tribes.

7. But it appears to us that it is necessary for the State of Bihar and Jharkhand to proceed to settle such disputes arising out of the creation of the two States as expeditiously as possible. It will not be beneficial either to the State of Bihar or Jharkhand to prolong with disputes regarding division of assets and liabilities arising out of the reorganization of the States by the Bihar Reorganization Act, 2000. After all, the reality that the two States have come into existence on 15.11.2000 has to be recognized by both the States. What is called for is statesmanship and an anxiety to settle all disputes between the States, so that the States can move in unison towards achieving the development of both the States in Co-operation. Lingered disputes arising out of the bifurcation of the State can only impede the progress of the two States and bring discontent to the citizens, to the employees of various organizations and the beneficiaries of the schemes sponsored by Corporations like the ones involved in this dispute. Now that the petitioners have raised the controversy before this Court, we think it proper to direct the Bihar Co-operative Development Corporation to approach the Central Registrar under the Multi State Co-operative Societies Act, 2002 to bring about a division of the assets and liabilities of the Bihar Co-operative Development Corporation between the branches located in the State of Bihar and those located in the State of Jharkhand.

8. In the counter affidavit filed by the State of Jharkhand, there is an indication

that the State proposes to constitute a separate corporation under the Co-operative Societies Act to cater to the welfare of the scheduled castes in the State of Jharkhand. We wonder why there should be the creation of a fresh corporation for that purpose by the State of Jharkhand. After all, the State of Jharkhand can take over or adopt those branches of the Bihar Co-operative Development Corporation which are located within the State of Jharkhand as the Jharkhand State Co-operative Scheduled Castes Development Corporation committed to the upliftment of the scheduled castes in the State of Jharkhand and to cater to their needs. This, in our view, will not only protect the interests of the scheduled castes in the State of Jharkhand, but also the interests of those who have been employed by the Bihar Co-operative Development Corporation and who are excepted to be working for the upliftment of the scheduled castes within the State of Jharkhand. This aspect, we hope will be seriously considered by the State Government of Jharkhand.

9. Meanwhile, now that the Central Government has thought it fit to direct the Bihar Co-operative Development Corporation to continue to pay the salaries of the petitioners, we are not inclined to go further into the question whether such an order could be passed by invoking Section 65 of the Bihar Reorganization Act. After all, there is no specific challenge to that order passed by the Central Government at the instance of the Bihar Co-operative Development Corporation, though, no doubt, its counsel while defending the writ petition, raised the question and also argued the same and suggested that the provisions of the Multi State Co-operative Societies Act alone had application. But we may notice that the order of the Government u/s 65 of the Bihar Reorganization Act, 2000 came to be passed during the pendency of the writ petition. This is obviously an interim measure to enure until the assets and liabilities are divided between the two States. It is in that context that we are not inclined to issue any further direction in this writ petition, on the basis that the order of the Central Government now made, sufficiently protects the interests of the petitioners.

10. Counsel for respondent No. 7, the Bihar Co-operative Development Corporation submitted that the corporation had no money to pay salaries to the the petitioners and persons similarly situated and that aspect has also to be taken note of. It appears to us that it is necessary for the State of Bihar, Jharkhand, and the Central Government to expedite the division of the assets and liabilities of the Bihar Co-operative Development Corporation formed for the welfare of the scheduled castes, whether it be u/s 65 of the Bihar Reorganization Act, 2000, or u/s 103 of the Multi State Co-operative Societies Act, 2000. We direct both the States of Bihar and Jharkhand to take immediate steps for division of the assets and liabilities of respondent No. 7 between the States imbibing the spirit of the Bihar Reorganization Act, 2000 and taking note of the need for an early settlement of all disputes between the two States. Meanwhile, the direction issued by the Central Government to respondent No. 7 will continue to operate.

11. This writ application is disposed of with the above directions.