

(1987) 04 AHC CK 0033
In the Allahabad High Court

Case No : Writ Petition No. 1551 of 1985 (with connected writ petitions)

Pashu Shay Chhedan Vikray Shram Samvida Sahkari Samiti
Ltd., Barabanki

APPELLANT

Vs

State of U.P

RESPONDENT

Date of Decision : 15-04-1987

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 3, 6, 7

Citation : (1987) 04 AHC CK 0033

Hon'ble Judges : U.C.Srivastava, J and R.Singh, J

Final Decision : Dismissed

Judgement

U.C., Srivastava

1. These petitions have been bunched together as common questions arise in these cases to the effect as to whether the Director of Small Scale Industries is the Registrar of the Cooperative Societies for registering Societies for collecting bones, hides and skin of dead animals etc., or registration of the same has to be done by the Deputy Registrar, Cooperative Societies and the registration made by him will be valid so as to enable the said registered society to obtain licence from Zila Parishad for its business of collecting bones, hides and skin and the further question which arises is as to whether only one cooperative society for one Nyaya Panchayat can be registered or there can be more that one cooperative society within the area of one Nyaya Panchayat. In Writ Petition no. 1551 of 1985 which is the leading case, prayer for quashing the order dated 2.4.1985 passed by Zila Parishad, Barabanki cancelling the licence of the petitioner granted earlier has been made besides the prayer for direction to the opposite parties not to put any hindrance in collecting bones, hides etc. in Block Banki, district Barabanki.

2. In writ petition no. 951 of 1985 arising out of different application of district Barabanki, a prayer for quashing notice issued by the District Assistant Registrar informing the members that within the jurisdiction of one NyayaPanchayat one society will be registered and further prayer has been made that Zila Parishad be

directed not to issue licence to those societies which have been registered by the Deputy Registrar, Cooperative Societies. In other petitions prayer of similar nature mentioned in above two petitions have been made.

3. The petitioner's society i.e. Pashu Shav Chhedan Vikray Shram Samvida Sahkari Simiti Ltd., Gandhi Nagar, Barabanki was registered by the Deputy Registrar, Cooperative Society, Faizabad Division on 19.9.1984 as labour contract society which according to its allegations consists of only Chamar community whose customary business from the ancestral period is that of collecting bones, hides etc. of dead animal. It appears from the counter affidavit that some of the members of the petitioner's society applied for registration of industrial cooperative society, to the Director of Industries who rejected the same on 22.6.1982, against which a writ petition is pending. Under the byelaws of Zila Parishad the contract for the said purpose is given by way of licence to the highest bidder and without licence no one can carry on the said business. Litigation in the matter had started since past and the Supreme Court on 27.4.81 gave directions to the State of Uttar Pradesh for instructing the Registrar of the Cooperative Societies for taking steps to organise the cooperative societies of persons carrying on occupation of skinning and further directed the Zila Parishad to give contracts to those cooperative societies. It was thereafter that the State of Uttar Pradesh issued letters to the Director of Industries, Kanpur who was also Registrar of Industrial Cooperative Societies, U.P. and to all the District Magistrates directing them to organise and register cooperative societies of those persons who carry on the business of collecting hides and bones.

4. A notice was circulated on 1.4.85 by Zila Parishad, Barabanki asking that persons who are interested in the matter should apply with requisite licencing fee and it was provided in the said notice that preference will be given to the legally registered cooperative societies. This clause seems to have been inserted in view of the amended bylaws of Barabanki Zila Parishad which were notified in U.P. Gazette on 2.3.1985. The said byelaws provide that for collecting bones and hides etc. ordinarily not more than one licence should be granted for one Gram Panchayat and if area of a particular NyayaPanchayat will be large one then the same will be included into more than one and for this position not more than one licence will be granted. The byelaws further provide that if more than one application for licence is given for one NyayaPanchayat or area of a NyayaPanchayat, preference will be given to the legally registered cooperative society. The tender given by the petitioner's society was accepted and it was given licence to carry on the business of collecting hides and bones and after cleaning them to sell it. The petitioner's society deposited the requisite amount of Rs. 61325.25 p. for the same. It was thereafter on 2.4.1985 that the order of cancellation of licence was passed which, according to the petitioner, was done without giving any opportunity of hearing to them. This cancellation order was passed on the ground that the petitioner's society was not a duly registered society, it having been registered with the Deputy Registrar of Cooperative Societies. According to the petitioner, the society having been registered in the

month of Sept. 1984 and the State Government having issued a circular in the month of December 1984 viz. 15th December 1984 informing all the District Magistrates that henceforth no such society will be registered by him but the circular did not affect the society registered before its issuance. The cancellation order, it seems, has taken note of the fact that some influential contractors got their society registered from the Deputy Registrar, Cooperative Societies which was against the State Government's decision in respect of which subsequently a directive dated 15.12.1984 contained in the aforementioned circular was issued stating that such societies are to be registered only by the Director of Industries and the licences which have been granted to societies not registered by the Director of Industries are to be cancelled.

1 The petition has been contested by the State and the Zila Parishad and also by Pashu Shav Chhedan Audyogik Utpadan Sahkari Samiti Limited Gandhi Nagars Barabanki which was impleaded at its instance on the ground that it was a duly registered dooperative society and the licence could not have been granted to the petitioner" and it was to be granted to those societies the membership of which was confined to the poor members of Chamar community whose customary business was skinning, Collecting bones, hides, skins etc. Whereas the petitioner's society is Labour Contract Society dominated rather by members of one family which ever owns several trucks and are rich people. The opposite party no. 4 which is a registered society was registered by Deputy Director of Industrial Cooperative Societies Directorate of Industries, U.P. Kanpur as Industrial Cooperative Society on 20.2.1982 i.e. after the letter dated 2.5.1981 issued by the State Government for registering such cooperative societies. The opposite party no. 4 also gave a notice on 23.1.1984 to the Deputy Registrar, Cooperative Societies and various reminders were sent to it not to register such societies which are to be registered only by the Director of Industries. On 21.2.1985 the Registrar, Cooperative Societies also wrote a letter to the Deputy Registrar, Cooperative Societies, Faizabad that all such type of societies are only to be registered by the Director of Industries or by an officer empowered for the purpose of registration of Industrial Cooperative Societies as they come within the zone of industries with reference to State Government letter dated 20.12.1984 and earlier letter dated 10.1.1984.

6. Section 3 of the U.P. Cooperative Societies Act provides that the State Government may appoint a person to be the Registrar of Cooperative Societies for the State and for the purposes of the Act by general or special order confer art any person all or any of the powers of the Registrar. Such an order shall be deemed to confer on him all the powers under that provision. The State Government vide Notification No. C131/XIICA314 (R)62 dated April 10, 1970 conferred powers of Registrar, Cooperative societies under section 3 of the Act upon any officer for the time being holding any one of the posts of the Director of Industries, U.P., the Additional Director of Industries Incharge Industrial Cooperative Scheme and the Deputy Registrar, Industrial Cooperative U.P. at the headquarters of Directorate of Industries to exercise the powers of the Director

of Industries.

7. Thus in view of the above notification, the officers mentioned therein were to exercise the powers of Registrar, Cooperative Society even for registration of Industrial Cooperative Societies. Powers to register such societies were not conferred upon any other officer of the Cooperative Department prior or subsequent to the publication of the said notification.

8. It is to be noticed that in the State Government's letter dated 15.12.1984 by which it was impressed that such societies are to be registered as Industrial Cooperative Societies by the Director of Industries. Some letter was also issued on 10.1.1983, copy of which has not been filed by either party, reference of which finds place in Registrar, Cooperative Societies' letter dated 2.2.1985, which is on record but neither of the party to the case have placed the said letter dated 10.1.83 on record. Under the existing directions, one society for one particular area was to be registered and the society of opposite party no. 4 having already been registered by the Deputy Director of Industries for the purposes that is Industrial Cooperative Society in 1982 the petitioner society applied subsequent to it in 1984 for registration of its society as Labour Contract Society. Rule 2(s) of U.P. Co operative Society defines "Labour Contract Society". The same reads as under:

2(s) "Labour Contract Society" means a primary society, the primary object whereof is to carry out labour contract works or to secure employment for its members on piece wage basis or on partly piece wage basis and partly time wage basis. ?

The primary object of such a society is very clear and the difference between such a society and Industrial Cooperative Society is obvious. "Industrial Society" has been defined in Rule 2(q) of the U.P. Cooperative Societies Rules and the same is as under:

2(q). "Industrial Society" means a cooperative society the primary object whereof is to manufacture goods itself or to facilitate the manufacturer of goods by its members;

The object of Industrial Society is wide enough which would include collection and processing of raw material before manufacturing of goods, flaying curing and tanning of hides and skins and ancillary industries connected with the same and cottage leather industry is "village Industry" within the meaning of Section 2 (viii) of U.P. Khadi and Village Industries Board Act. Model Byedaws framed by the Registrar, Cooperative Societies in respect of Industrial Society and Labour Contract Society is quite different and in view of its objects and the model byelaws a labour contract society is to be registered by the Registrar, Cooperative Societies, that is, the Deputy Registrar, Cooperative Society who is competent to register the same. But a perusal of the objects and byelaws of she petitioners' society, some extracts of which have been placed on record, shows that its object are not the objects of a Labour Contract Society but are in

conformity with that of an "Industrial Cooperative Society" an indication of which can even be got from its name and yet the Deputy Registrar who had no powers to register such a society registered it as a "Labour Contract Society". Section 6 of the Cooperative Societies Act provides of the application for registration of a society and the requirements for the same. Section 7 of the Act provides that if Registrar is satisfied that the application complies with the conditions laid down under clause (a) to (d) of subsection (1) of Section 7 he shall register the society and its byelaws. It is thus the duty of the Registrar before registration of a society to see whether the society proposed to be registered is in accordance with the provisions of Cooperative Societies Act and Rules framed thereunder and the byelaws conform to the purpose and object of the Society. He is also to scrutinise that the proposed society complies with the requirements or conditions as laid down in Appendix I for Societies in general as well as for the particular class of societies to which the proposed society belongs as envisaged under Rule 8 of the U. P. Cooperative Societies Rules, 1968. It appears that the Deputy Registrar without scrutinising the objects and byelaws of the petitioners society which was sought to be registered as "Labour Contract Society" registered it even though from the objects and byelaws it was evident that it was an "Industrial Society", the registration of which was beyond his power. If there was no deliberate act on the part of the Deputy Registrar there was failure on his part to perform his duty and to apply his mind. The registration of the petitioner's society was not legal and the petitioner society is thus not being a legally registered society for the objects and purposes for which an "Industrial Cooperative Society" can be registered. The petitioner's society could have been registered for providing labour or contract For labour providing for physical labour in the matter for hides, bones and skins but not to perform functions or exercise rights and duties including manufacture and sale which are within the exclusive jurisdiction of Industrial Cooperative Society,

9. After the decision by a Division Bench of this Court dated 1.8.84 in Writ Petition No. 63 of 1983 Pashu Shav Udyog Audyogik Utpadan Sahkari Samiti Ltd. against Zila Parishad, Barabanki it appears that there was further amendment in the byelaws of Zila Parishad, Barabanki. The Bench took into consideration the fact that grant of more than one licence for an area may lead to viden (sic), as such it was desirable that not only preference should be given to a Cooperative Society but it should further be ensured that after such a licence is granted to a co operative society, a middleman should not be allowed to enter into the field, and one licence may be granted in respect of one Nyaya Panchayat but in that event separate portion of circle be allocated to different licences. Under the Byelaws framed by Zila Parishad., Barabanki, for one Nyaya Panchayat not more than one licence can be granted. This is in order to avoid cut throat competition between the members of same Nyaya Panchayat and they should carry out work through the cooperative society in a particular area. The byelaw could not be said to be violative of Article 19 of the Constitution as the same not only avoids cut throat competition but gives opportunity to all the persons of that circle to work

through cooperative Society. The classification is reasonable and advances the cause of cooperative movement on the Directive principles of State Policy enshrined in the Constitution of India, A labour contract society cannot be granted licence for collecting dead animals and take out hides and skins from them and thereafter sell it or carry on manufacture. The only work which can be assigned is to collect dead animals & to do other necessary physical labour for taking out skin & hides from them. A licence which is granted by Zila Parishad is not a limited one but its scope is quite wide and the said purpose can only be fulfilled by an industrial cooperative society. The petitioner's society not having been registered as an industrial cooperative society, that is, a cooperative society which was entitled to get the licence for bones, hides and skins granted by Zila Parishad, Barabanki. the order which has been passed by the Deputy Registrar, Cooperative Societies cancelling the registration order was perfectly legal and just, Even otherwise, registration did not empower the petitioner's society to get the licence of bones, hides and skins and the Zila Parishad obviously was not competent to grant licence to these cooperative societies which were not legally registered cooperative societies for the purpose for which licence was granted.

10. Thus the Deputy Registrar, Cooperative Societies rightly recalled the order vide order dated 2.4.85 registering the petitioner's society and in this view of the matter the petitioner's societies are not entitled to work in their respective blocks as their society is not a legally registered society for the purpose for which licence is granted by the Zila Parishad.

11. In view of what has been stated above, writ petition no. 1551 of 1985 lacks merits and deserves to be dismissed. It is accordingly dismissed and the interim order, if any, is discharged. There will be no order as to costs.

12. In Writ petition no. 951 of 1985 in which a prayer for quashing a notice issued by Deputy Registrar, Cooperative Societies dated 21.1.85 inviting the societies which want to register their society, to submit their applications for registration by opposite party no. 2 and the prayer for mandamus directing Zila Parishad not to issue licences for hides, bones to those societies which have been registered by opposite party no. 2, the Deputy Registrar, Cooperative Societies, Faizabad for the year 1985-86 is allowed and the said notice dated 21.1.85 contained in annexure 1 is quashed and the mandamus as prayed for is issued. Interim order, if any. is discharged.

13. In writ petition no. 6745 of 1985 a prayer for quashing order dated 16.12.1985 passed by Zila Parishad, Barabanki contained in annexure 6 and. the order dated 21.11.85 passed by opposite party no, 3 has been made and a mandamus has been sought commanding the opposite parties 2 and 3 not to give effect to the same and further to direct opposite party no. 4 not to interfere in the business of the petitioner. In view of what has been discussed in preceding writ petition, this writ petition deserves so be dismissed as the impugned orders are perfectly legal and just. Interim order, if any, shall stand discharged.

14. In writ petition no. 6746 of 1985 quite similar prayer has been made.

As such this writ petition is also dismissed on the very same ground. Interim order, if any is discharged.

15. In Writ petition no. 6747 of 1985 similar prayer has been made. As such this petition is also dismissed on the same ground. Interim "order is discharged.

16. Writ Petition no, 6864 of 1985 is also directed against the identical order. As such it is also dismissed and the interim order is discharged.

17. Writ Petition no. 559 of 1986 is also dismissed on the same ground and the interim order is discharged.

18. Writ Petition no. 1275 of 1986 is also dismissed as the petitioner's Society is not entitled for consideration of its application as its registration has been cancelled. Interim order is discharged.

19. Writ Petition no. 1566 of 1986 is also dismissed as the petitioner's society is not duly registered society and has no right to participate in the auction.

20. Writ petition no. 1567 of 1986 is also dismissed on the same ground on which the preceding one has been dismissed. Interim order is discharged.

21. Writ Petition no. 1568 of 1986 is also dismissed on the same ground and interim order is discharged.

22. Writ Petition no. 2105 of 1986 is also dismissed on the same ground and interim order is discharged.

23. Writ Petition no. 2109 of 1986 is also dismissed on the very same ground and interim order is discharged.

24. Writ Petitions no, 2110 and 1363 also deserve to be dismissed, They are dismissed accordingly. The interim order is discharged.

(Decided accordingly)