
(2013) 05 AHC CK 0043
In the Allahabad High Court
Case No : Writ Petition No. 8189 (MB) of 2012

Ram Krishna Pokhariyal and Another	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2014) 2 ALJ 721

Hon'ble Judges : Uma Nath Singh, J; Satish Chandra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—This writ petition has been filed inter alia with the prayers for issuance of a writ, order or direction in the nature of (i) certiorari quashing the impugned order dated 10.10.2011 passed by opposite party No. 5, as contained in Annexure No. 1 to this writ petition; (ii) mandamus commanding the Registrar, Uttar Pradesh Co-operative Societies not to interfere in the functioning of the Uttar Pradesh Upbhokta Sahkari Sangh Limited; (iii) commanding the Central Registrar, functioning under the Multi-State Co-operative Societies Act, 2002 (for short "the Act of 2002") to allot the registration number of the Uttar Pradesh Upbhokta Sahkari Sangh Limited under the relevant provisions of the Act of 2002; (iv) commanding the Central Registrar as well as the Committee of Management of the U.P. Upbhokta Sahkari Sangh Ltd. (the UPSS) to hold the election of the Committee of Management of the UPSS under the provisions of the Act of 2002 as early as possible; The brief facts, giving rise to filing of this writ petition are that petitioner Nos. 1 and 2 are the delegates of the Society-Zila Sahkari Vikas Sangh Limited Tihari Garwal (Muni Ki Reti) "Jaipur Sahkari Kraya Vikraya Samiti, Jaspur, Udham Singh Nagar" respectively to the UPSS and were elected as the members of the Committee of Management of the UPSS (commonly known as Director) in the elections held in 1999 and thus have a legal interest in the declaration of deemed Multi-State Co-operative Societies Status for the UPSS to save the interest of the Society, and

the people being served by it.

2. This writ petition has been directed against the order of Joint Registrar, Co-operative Societies, U.P., Lucknow dated 10.10.2011 passed without jurisdiction by which Cooperative Society "Zila Sahkari Vikas Sangh Limited Tihari Garwal (Muni Ki Reti)" and "Jaipur Sahkari Kraya Vikraya Samiti, Jaspur, Udham Singh Nagar" as aforesaid have been expelled from the membership of the UPSS. The Joint Registrar, Co-operative Societies, UP, Lucknow Division, Lucknow, through the order dated 29.07.2011 illegally directed the UPSS to remove the petitioners from its membership though they were duly elected members of the Committee of Management of the UPSS in the elections held just before the commencement of U.P. State Reorganization Act, 1999. The petitioners came to know the fact regarding the expulsion of the Society "Zila Sahkari Vikas Sangh Limited Tihari Garwal (Muni Ki Reti)" and Jaipur Sahkari Kraya Vikraya Samiti, Jaspur, Udham Singh Nagar" under the direction to the Committee of Management of the UPSS from its membership in the last week of August, 2012 when they contacted the office of the UPSS at Lucknow. The aforesaid orders dated 10.10.2011 and 29.07.2011 were never communicated to the petitioners and thus they continued their relations with the UPSS as earlier and as usual till date. The Committee of Management of the UPSS has never expelled the petitioners-societies from its membership and still the petitioners-societies are its members as such.

3. It appears from the averments that the UPSS, an Apex Body had and presently is having jurisdiction throughout the State of Uttar Pradesh including the districts which formed the State of Uttarakhand on 9.11.2000 as a result of the Uttar Pradesh Reorganization Act, 2000. The members-Societies of the UPSS which fell in the State of Uttarakhand after the U.P. State Reorganization Act, 2002 are: Nainital Zila Kendriya Upbhokta Bhandar, Nainital, Sahkari Kraya Vikray Samiti Ltd., Haldwani, Sahkari Kraya Vikray Samiti Ltd., Tanakpur, Sahkari Kraya Vikray Samiti Ltd., Khatima, Sahkari Kraya Vikray Samiti Ltd. Ramnagar, Nainital Phal Evam Sabji Viparan Sahkari Sangh, Kariyalekh, Sahkari Kraya Vikray Samiti Ltd. Kashipur, Tarai Vikas Sahkari Sangh Ltd., Rudrapur, Sahkari Kraya Vikray Samiti Ltd., Bajpur, Salt Sahkari Kraya Vikray Samiti Ltd., Marchula, Ram Nagar, Nainital Zila Sahkari Sangh Ltd., Haldwani, Jaspur Sahkari Kraya Vikraya Samiti Ltd., Jaspur, Kaladongi Sahkari Kraya Vikraya Samiti Ltd., Kaladongi, Sitarganj Sahkari Kraya Vikraya Samiti Ltd. Sitarganj, Kichcha Sahkari Kraya Vikraya Samiti Ltd., Kichcha, Kendriya Upbhokta Sahkari Bhandra Ltd., Almora, Kumaon Sahkari Sangh Ltd., Almora, Phal Evam Sabji Vipran Sahkari Sangh Ltd., Almora, Zila Sahkari Upbhokta Evam Kraya Vikraya Sangh Ltd., Pithoragarh, Zila Sahkari Vikas Sangh Ltd., Kotdwar Pauri, Sahkari Kraya Vikraya Samiti Ltd. Kotdwar, Zila Sahkari Vikas Sangh Ltd., Tehri Garhwal, Jalkholi Phal Uddyan Evam Viparan Sahkari Sangh Ltd., Sukhari (Maskat) Tehri Garhwal, Chamba Phal Vipran-1000 Sahkari Sangh Ltd., Kendriya Upbhokta Sahkari Bhandra Ltd. Chamoli, Zila Kendriya Upbhokta Bhandar Ltd., Uttar Kashi, Uttar Kashi Zila Sahkari Kraya Vikraya Evam Phal Vipran Samiti Ltd., Naugaon, Uttar Kashi, Dehradun Cooperative Store Ltd., Dehradun. Sahkari Kraya Vikraya Samiti

Ltd., Dehradun and Haridwar Union Central Consumer Ltd., Haridwar.

4. Upon the reorganization of the State of Uttar Pradesh under the Uttar Pradesh Reorganization Act, 2000 and creation of a new State of Uttaranchal (name changed to "Uttarakhand") the Kumaun and Garhwal Revenue Divisions and District Haridwar now form the part of the State of Uttaranchal.

5. Sections 3 and 4 of the Uttar Pradesh Reorganization Act, 2000, are reproduced hereunder:--

3. Formation of Uttaranchal State-On and from the appointed day, there shall be formed a new State to be known as the State of Uttaranchal comprising the following territories of the existing State of Uttar Pradesh, namely-Pauri Garhwal, Tehri Garhwal, Uttarkashi, Chamoli, Dehradun, Nainital, Almora, Pithauragarh, Udham Singh Nagar, Bageshwar, Champawat, Rudra Prayag and Haridwar districts and thereupon the said territories shall cease to form part of the existing State of Uttar Pradesh.

4. State of Uttar Pradesh and territorial division thereof-On and from the appointed day, the State of Uttar Pradesh shall comprise the territories of existing State of Uttar Pradesh other than those specified in Section 3.

6. With the bifurcation of the State of Uttar Pradesh and creation of a new State of Uttaranchal (now Uttarakhand) the area of operation of the UPSS extended to two States i.e. the State of Uttar Pradesh and the State of Uttaranchal (now Uttarakhand) and the UPSS started serving: the interest of its members from both States w.e.f. the date of reorganization of the State of Uttar Pradesh. Thus the UPSS could not be legally governed by the U.P. Co-operative Societies Act, 1965 (for short "the Act of 1965") which is a State legislation capable of regulating the affairs of Cooperative societies situated only in State of Uttar Pradesh. By operation of Section 95 of the Multi State Cooperative Societies Act, 1984 (the Act of 1984), on the creation of State of Uttarakhand on 9.11.2000, the UPSS became a Multi State Co-operative Society and the U.P. Co-operative Societies Act, 1965 (the U.P. Act of 1965) ceased to apply in the affairs of the UPSS.

7. Shri. Anil Kumar Tiwari, learned Senior Counsel, appearing for the petitioners submitted that by bifurcation of the State of Uttar Pradesh and creation of new State of Uttaranchal (now known Uttarakhand), the area of operation of the UPSS has extended to two States namely the State of Uttar Pradesh and the State of Uttaranchal (now Uttarakhand) and it has continued to serve the interests of its members coming from both the States. Therefore, on and from the date of reorganization of the State of Uttar Pradesh, the UPSS could not be legally governed by the Uttar Pradesh Cooperative Societies Act, 1965 (the U.P. Act of 1965) which being a State Legislation is capable of regulating the affairs of the Co-operative Societies having the area of operation confined to only one State viz; the State of Uttar Pradesh The Multi State Co-operative Societies Act, 1984 (the Act of 1984) was replaced by the Multi State Co-operative Societies

Act, 2002 (the Act of 2002) which came to operation on 16.8.2002, however, provisions of Section 95 of the Act, 1984 were retained in Section 103 of the Act of 2002. Section 95 of the Act of 1984 for the ready reference is being quoted below:

95. Cooperative Societies functioning immediately before re-organization of States.--

(1) Where by virtue of the provisions of Part I of the States Reorganization Act, 1956, or any other enactment relating to reorganization of States, any co-operative 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 co-operative 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, insofar as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.

(2) If it appears to the Central Registrar or any officer authorized in this behalf by the Central Government (hereafter in this section referred to as the authorized officer) that it is necessary or expedient to reconstitute or reorganize any society referred to in sub-section (1) the Central Registrar or the authorized officer, as the case may be, may, with the previous approval of the Central Government, place before a meeting of the general body of that society, held in such manner as may be prescribed, a scheme for the reconstitution or reorganization, including proposals regarding

(a) the formation of new multi-State cooperative societies and the transfer thereto in whole or in part, of the assets and liabilities of that society, or

(b) the transfer, in whole or in part, of the assets and liabilities of that society to any other multi-State co-operative society in existence immediately before the date of that meeting of the general body (hereafter in this section referred to as the existing multi-State co-operative society).

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar or the authorized officer agrees, he shall certify the scheme and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-laws for the time being in force, be binding on all the societies affected by the scheme, as well as the shareholders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar or the authorized officer may refer the scheme to such Judge of the appropriate High Court, as may be nominated in this behalf by the chief Justice thereof, and the decision of that Judge in regard to the scheme shall be final and shall be binding on all the societies affected by the scheme as well as the shareholders and creditors of all such societies.

Explanation--In this sub-section, "appropriate High Court"" means the High Court within the local limits of whose jurisdiction the principal place of business of the multi-State cooperative society is situated.

(5) Notwithstanding anything contained in this section, where a scheme under sub-section (2) includes any proposal regarding the transfer of the assets and liabilities of any multi-State cooperative society referred to in clause (b) "thereof, the scheme shall not be binding on such multi State co-operative society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by that multi-State co-operative society by a resolution passed by a majority of the members present at a meeting of its general body.

8. Thus, the affairs of the UPSS are governed by the Central Acts of 1984 and 2002, being the Acts enacted by the Parliament and having the overriding effect over the State Legislation including the Uttar Pradesh Cooperative Societies Act, 1965 (the U.P. Act of 1965). The State legislature has then no competence to legislate in respect of the subject matter of a multi-State co-operative society.

9. The Hon''ble Supreme Court in Naresh Shankar Srivastava Vs. State of U.P. and Others, has held that the Apex Society PACSFED of the U.P. has automatically become the Multi-State Co-operative Society with effect from the date of reorganization of U.P. into State of U.P. and Uttaranchal. Paragraphs, namely, 21, 22, 23 and 24 of the aforesaid judgment being relevant in the present context are reproduced as:--

21. In the case of Anandmal and Another Vs. State of Rajasthan, , the High Court of Rajasthan, while interpreting Section 119 of the State Organisation Act, 1956 which is in pari materia to Section 86 of the U.P. Act held that Section 119 of the State Organisation Act would have no application to the Central Acts.

22. Similarly, in the case of The Mapusa Urban Co-operative Bank Ltd. and another Vs. Shri G.S. Patil and others, , the Bombay High Court held that Section 95 of the Multi-State Act is an independent provision which resolves the situation arising out of operation of law and avoids chaos and confusion arising out of the reorganisation of a State.

23. Besides, we cannot lose sight of the fact that Section 18 of the Multi- State Act lays down a procedure for conversion of a State co-operative society into a multi-State co-operative society whereas Section 95 of Multi-State Act contained in Chapter XII deals with a specific situation in which certain cooperative societies would become deemed multi-State co-operative societies automatically by operation of law. Therefore, the finding of the High Court that until the procedure laid down for converting a cooperative society into a multi-State co-operative society is followed, the co-operative society would continue to be a State co-operative society to be governed and regulated by the provisions of U.P. Act, is not correct.

24. It has been contended by the respondents that in view of Section 129 of the

Uttaranchal Act which came into force in 2003, 14 member societies of PACSFED in Uttaranchal would automatically become registered under the Uttaranchal Act. However, the said contention is legally untenable. Once the State of U.P. was bifurcated by the Reorganisation Act which came into force on 09.11.2000, Section 95 automatically got attracted. By virtue of Section 95 of the Multi-State Act, PACSFED becomes a Multi-State Society. On 14.02.2001, when the Central Registrar of the Multi-State Co-operative Societies issued the Registration Certificate granting registration of the PACSFED under the Multi-State Act, admittedly, the Uttaranchal Act of 2003 was not in existence. Even otherwise, a State legislation viz. Uttaranchal Act which has been enacted subsequently cannot have an overriding effect over a central law viz. the Multi-State Act. The Uttaranchal Act can govern and regulate the cooperative societies whose objects extend to and apply within the State of Uttaranchal. So, the finding of the High Court that with the enforcement of the Uttaranchal Co-operative Societies Act, 2003, with effect from 21.5.2003, the Multi-State Act shall not be applicable is erroneous. The byelaws of the PACSFED have not been amended so far. The area of operation of the PACSFED as laid down in its byelaws is still the same as it was on the date of the reorganisation of the State of U.P. Therefore, it would be legally impermissible to say that now the area of operation of the PACSFED is confined to the State of U.P. alone and that it has ceased to be a multi-State cooperative society, As far as withdrawal of member-cooperative societies of the PACSFED operating in the State of Uttaranchal is concerned, the deemed conversion of a cooperative society into a multi-State cooperative society by virtue of Section 95 of the Multi-State Act is an irreversible process and the membership of a multi-State cooperative society in a particular State at a given point of time is only a fortuitous circumstance on the basis of which a multi-State co-operative society cannot automatically revert to assume the character of a State co-operative society. Further, there is no provision in the Multi-State Act which permits such automatic conversion of a multi-State co-operative society into a State co-operative society by operation of law. The only relevant consideration for continuance of a multi-State co-operative society as a multi-State co-operative society is that it should have its objects not confined to one State and since the objects of the PACSFED still remain the same as it was immediately before the reorganization of the State of Uttar Pradesh, it shall be deemed to be a Multi-State co-operative society by virtue of deeming provision of Section 95 of the Multi-State Act.

10. In spite of the aforesaid law laid down by the Hon"ble Supreme Court which is binding on all officers and authorities throughout India under Article 141 of the Constitution of India, the Joint Registrar, Lucknow, exercising the powers of Registrar under the U.P. Act, 1965, removed the petitioners-societies of Uttarakhand from the membership of the UPSS vide the order dated 10.10.2011 passed without jurisdiction and without giving an opportunity by issuing a show cause notice. This Court in Writ Petition No. 1357 (MB) of 2010: (2010(4) ALJ 461) (Gyan Singh Yadav and others v. State of U.P. and others") has, while

relying upon the aforesaid judgment of the Hon'ble Supreme Court, also held that the Northern Railway Primary Co-operative Bank Ltd. is a Multi-State Co-operative Society on the same principle after operation of the provisions of U.P. Reorganization-Act, 2000 read with the provisions of Multi-State Co-operative Societies Acts which are applicable to the UPSS. The UPSS is continuing its business activities in the State of Uttarakhand and is deriving income from its assets even today as it used to do before the Reorganization of State of Uttar Pradesh. It is also contended that the UPSS is continuing to utilize the share money of the members-societies of Uttarakhand including that of petitioners-societies in the expanding business of the UPSS even today.

11. It is also a submission of learned Senior counsel Shri Anil Kumar Tiwari, that the order of Joint Registrar, Lucknow Division dated 10.10.2011 not only suffers from jurisdictional error but is also violative of the principles of natural justice enshrined in Article 14 of the Constitution of India. The Central Registrar Co-operative Societies, Government of India by and under necessary implication of the provisions of the Multi-State Co-operative Societies Acts of 1984 and 2002 is duty bound to register the UPSS as a Multi-State Co-operative Society and allot a Registration number accordingly.

12. On the other hand, on behalf of respondent Nos. 6 and 7, it is contended that the provisions of Multi State Cooperative Society Act, 2002 (the U.P. Act of 2002) would not apply in the instant case of the UPSS, which was and continues to be an Apex Society only under the U.P. Co-operative Societies Act, 1965 (the U.P. Act of 1965). The situation even after creation of the State of Uttaranchal (now Uttarakhand) has not undergone any change. It is reiterated that on 10.10.2011, the Joint Registrar, Co-operative Societies, U.P., Lucknow terminated the membership of 30 co-operative societies of Uttaranchal. These 30 co-operative societies also include the Jaspur Sahkari Kraya Vikraya Samiti Limited, Jaspur and the Zila Bheshaj Evam Vikas Sangh Ltd. Muni Ki Reti, Tehri. The petitioners, who claim to be members of these Co-operative Societies have no locus standi to file the petition, for, their area of operation is confined only to the State of Uttaranchal. It is also submitted that in the year 2010, election of Uttaranchal Rajya Sahkari Vipnan Sangh Ltd. took place and the filing of the present writ petition in November, 2012 is highly belated. The election of the UPSS took place on 29.3.2010 separately from that of the Sangh in Uttaranchal. The Sangh in Uttaranchal has been functioning independently and it has not been made a party to the writ petition. As stated, the election in Uttar Pradesh Upbhokta Sangh was held in March, 2010 and thus filing of the instant writ petition with the prayer that the UPSS has become a Multi-State Cooperative Society, is devoid of any substance. Further, according to the respondents, the provisions of Section 103 of the Multi State Co-operative Society Act, 2002 (the Act of 2002) would not be applicable. Moreover, as the election of co-operative societies in Uttar Pradesh took place under the provisions of U.P. Act of 1965 on 29.3.2010 and the term of the societies was also reduced to two years under the U.P. Amendment Act, the office bearers and members of the society cannot, in any

case, be continued for 5 years.

13. On due consideration of rival submissions, we find considerable force in the arguments of learned Senior Counsel for the petitioners. The Apex Society, namely, the UPSS, having jurisdiction throughout the State of Uttar Pradesh, including the districts which now form the State of Uttarakhand, on 9.11.2000 the date of coming into force of U.P. State Reorganization Act, 2000 and the creation of the State of Uttaranchal appears to have acquired the status of a deemed Multi State Cooperative Society from that date, namely, 9.11.2000 which continued undisputedly till the date 10.10.2011 when the order in controversy was passed by the Joint Registrar, Cooperative Societies, Lucknow.

14. Vide Sections 3 and 4 of the U.P. State Reorganization Act, 2000, the districts falling in the State of Uttaranchal ceased to be the "part of State of Uttar Pradesh. Thus, with the, bifurcation of the State of Uttar Pradesh and " creation of a new State of Uttaranchal (now Uttarakhand), the area of operation of the UPSS extended to two states, namely, the State of Uttar Pradesh and the State of Uttaranchal and the UPSS as such started serving the interest of the member-societies of both the States. Thereafter, the UPSS could not have been legally governed by and under the provisions of U.P. Act of 1965, which being only a State Legislation is capable of regulating the affairs of the cooperative societies within the State of Uttar Pradesh. Now the area of operation of the U.P. Act of 1965 is confined only to the State of Uttar Pradesh. It is manifest from the provisions of Section 95 of the Act of 1984 that on the creation of State of Uttaranchal on 9.11.2000, the UPSS has acquired the status of "deemed Multi State Cooperative Society" which has to be registered under the provisions of the Act of 2002.

15. In view of the multi State character of the Society, the affairs of the UPSS are to be governed only under the provisions of the Central Act of 1984 till 2002 and thereafter under the provisions of the Act of 2002. These Acts being the Acts of Parliament have overriding effect over the State Legislation namely the U.P. Act of 1965. Thus, the State Legislature has no competence to legislate in respect of the subject-matter of the Multi State Cooperative Societies. As such, the Amendment Act whereby the term of the Co-operative Societies was reduced to two years, or any other such amendment, shall not apply in the case of the UPSS. The position has been dealt with in great detail by the Hon"ble Apex Court in the case of Naresh Shankar Srivastava Vs. State of U.P. and Others, vide the relevant paragraphs extracted and reproduced hereinabove. The exercise of powers by the Joint Registrar, Cooperative Societies, Lucknow, U.P. under the circumstances in respect of the affairs of the UPSS, admittedly under the U.P. Act of 1965, whereby the societies of Uttarakhand, including the Societies of which the petitioners are the members, have been expelled from the membership list of the UPSS vide the impugned order dated 10.10.2011, without following the principles of natural justice, suffers from the lack of jurisdiction and the pale of competence.

16. This Court, in a similar case, namely the case of Gyan Singh Yadav (supra) has already held that the Northern Railway Primary Co-operative Bank Ltd. is a Multi State Cooperative Society in the light of the provisions of U.P. State Reorganization Act, 2000 and the Central Acts of 1984 and 2002.

17. Thus, the submissions of the respondents that in view of the order dated 10.10.2011 passed by Joint Registrar, Co-operative Societies, Lucknow, the societies failing in the State of Uttranchal, of which the petitioners happened to be the members have ceased to be the members of the UPSS and that the UPSS is essentially a State Co-operative Society, would not be sustainable in law, and as such, it deserves to be repelled and rejected.

18. in view of all the aforesaid discussion, we quash the order dated 10.10.2011 passed by the Joint Registrar, Co-operative Societies, Lucknow, respondent No. 5, with direction to the Registrar, U.P. Cooperative Societies to refrain from interfering in the functioning of the UPSS, with further and separate direction commanding the Central Registrar functioning under the Multi State Co-operative Societies Act, 2002 (the Act of 2002) to allot registration number to the UPSS on its completing the formalities as required under the Central Acts and the Rules made thereunder. We furthermore direct that the Central Registrar as well as the Committee of Management of the UPSS shall hold election under the provisions of the Act of 2002 after granting the registration, and till the next election is conducted, the Committee of Management elected in 2010 shall continue to function during the transition and interregnum period. In the premises set out hereinabove, we allow the Writ Petition in terms of prayers with the aforesaid directions.

There shall be no orders as to costs.