(2016) 06 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2837 of 2016

Samri Gram Seva Sahkari Samiti — APPELLANT

Vs

State of Rajasthan — RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Citation : (2016) AIR(Raj) 140 : (2016) 4 WLC 228

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. A.K. Choudhary, Mr. Suresh Charan, Mr. Dinesh Choudhary, Mr. Sharwan Kala, Mr. Deepak Kanojiya, Mr. Shambhoo Singh, and Mr. Vineet R. Dave, Advocates, for the Appellant; Dr. P.S. Bhati, AAG, with Mr. S.S. Rathore, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

P.K. Lohra, J.—The cluster of all these 437 petitions are broadly founded on identical facts and the question of law involved therein are also common, therefore, all these petitions are heard together and disposed of by this common order.

Succinctly stated the facts are that petitioner-societies are registered under the Rajasthan Cooperative Societies Act, 2001 (for short, ''Act of 2001'') enjoying the status of Primary Agriculture Credit Cooperative Society (PACS). Being registered co-operative societies, the petitioners are body-corporate having perpetual succession and common seal. The societies are authorised to hold property, enter into contracts, institute and defend suit and other legal proceedings and to undertake all these activities in furtherance of the aims and objects of their constitution. Essentially, in most of the petitions, petitioner-societies have assailed various orders/communications issued by the second respondent, Registrar Cooperative Societies, Jaipur (for short, ''Registrar''). The grievance of the petitioner-societies is against communication dated 16th of June, 2015, whereby Registrar has issued necessary instructions to all the societies (PACS/

LAMPS) not to carry on banking activities in adherence of directions issued by the Division Bench of this Court and Supreme Court and interim order passed by the Supreme Court in SLP (C) No.16316/2015. That apart, the petitioner-societies have also questioned the subsequent/consequential orders issued by the Registrar from time to time. An affirmative attempt is also made, at the behest of the petitioner-societies, to assail the impugned communication dated 2nd of December, 2015, whereby Registrar has issued certain directions in the matter of disbursement of loans to the agriculturist members of the societies under the Kisan Credit Card (KCC) Schemes.

2. Precisely, the petitioners have voiced their grievances against the impugned communications on the plank that adherence of these orders/communications would prove detrimental to their interests and may result in thwarting the very aims and objects for which societies are formed. An attempt is also made by the petitioner-societies to castigate the impugned orders/communications as mala fide and outcome of colourable exercise of powers. The petitioner-societies have also romped in Section 30-B of the Act of 2001, whereby the societies are endowed with autonomy in all financial and internal administrative matters. Sections 51 and 125 of the Act of 2001 are also referred to by the petitioner-societies for ventilating their grievance against the impugned orders/ communications. As per version of the petitioners, the impugned communications are in complete derogation to sub-section (6) of Section 51 of the Act of 2001 and the mandate of Section 125 of the Act of 2001. Asserting the separate and distinct entity of each societies, the petitioners have also averred in the writ petitions that respondent-Registrar is not authorised to undermine their status as a body-corporate by reducing their status as business correspondent (BC) or business correspondent agent (BCA) of the District Central Cooperative Bank. In totality, the petitioner-societies have made an affirmative attempt to question the legality and propriety of all the impugned communications by urging with emphasis that these communications would jeopardise their financial autonomy and may eventually disrupt the societies due to financial crunch and stringencies. In the matter of disbursement of ST loans to KCC account-holders, the petitioner-societies have also laid challenge to order/communication dated 2nd of December, 2015 by categorizing the same as de-hors the spirit of policy making agency i.e. NABARD besides other grounds.

3. On behalf of respondent, State of Rajasthan and Registrar, reply to the writ petition is submitted. In the return, the respondents have specifically pleaded that a primary agriculture credit society is not authorised to carry on banking activities. As per the positive assertion of the respondents, banking activities are only permissible to the Apex Cooperative Bank and District Central Cooperative Banks. While referring to area of operation of the petitioner-societies, it is submitted in the reply that these societies are at the panchayat level and whose members are villagers of a particular panchayat area. Highlighting functioning of these societies, it is pleaded in the return that function of the societies is to give crop loans (for Rabi and Kharif crops) and to undertake the business of sale of

fertilizers and fair-price shops. As per the respondents, the petitioner-societies are registered only when it has minimum 1 lac deposits and 5 lacs of share capital. For elucidating flow of money, in the form of loaning in the complete cooperative system, it is urged by the respondents that loan is given by the concerned society to its members while borrowing it from the Central Cooperative Bank wherein accounts of the members of the societies are also maintained. In the complete structure of loaning 40% amount is of NABARD. In order to explain and defend the requisite order/communication issued by the Registrar on 2nd of December, 2015, the respondents have placed reliance on meeting dated 11th of July, 2015 held at the head-office of NABARD, Mumbai.

4. Elaborating what has transpired in the meeting, it is submitted by the respondents that during deliberations it has emerged out that in respect of crop loans, the subsidy in interest, which is to be given by the Central Government, is received belatedly which is eventually causing loss to the cooperative banks, therefore, according to respondents, in that background a decision was taken that scheme of Direct Benefit Transfer (DBT) be implemented so that subsidy in interest payable by the Central Government may go directly to account of beneficiary i.e. loanee member/farmer who is getting loan through PACS. Therefore, according to the respondents, the said decision has prompted the Registrar to issue necessary directions for opening the accounts at the level of Central Co-operative Bank of the loanee member/farmer for facilitating DBT directly to the account of beneficiary. For substantiating the said positive assertion, communications from the Apex Bank dated 11th of July 2015 and 8th of September, 2015 are also placed on record. While referring communication of the Registrar dated 5th of October, 2015, it is submitted by the respondents that the said order was issued in compliance of the order passed by this Court on 14th of May, 2015 and 27th of May 2015. It is urged by the respondents that the petitioner-societies were directed to be a Business Correspondent (BC) or Business Correspondent Agent (BCA) so that benefits of various schemes of Govt. of India or State Government may be made available at the village level/ grass root level. Reference, in this behalf, is also made regarding NREGA, Bhamasha, Old Age Pension/subsidy etc. schemes.

5. While joining issue with the petitioners, it is submitted by the respondents that no attempt is made to curtail autonomy of the petitioner-societies inasmuch as opening of CBS accounts with the bank shall keep the margin of interest i.e. @ 2% per annum intact with the petitioner-societies and therefore, there would be no reduction in their business. It is also pleaded, in the return, that opening of saving bank account in the bank will also be helpful in checking and stoppage of irregular, forge and false loans namely advancement of loan to a non-existent person. As per version of the respondents, Registrar with the solemn object to prevent embezzlement and misappropriation of funds of the societies has issued requisite directions. The respondents have also defended the action of opening of the loan account by urging that the same is in the best interest of the beneficiary so that he can reap the fruits of the loan amount. With all these facts, the

respondents, in their return, have defended their action.

6. In most of writ petitions, no formal reply to the writ petition is submitted by the concerned District Central Cooperative Bank except in S.B. Civil Writ Petition No.4301/2016. In the said writ petition, the Central Cooperative Bank Ltd., Bhilwara has submitted its reply wherein preliminary objection about maintainability of the writ petition is raised. In substance, the reply of the Bank is inspired by the reply of the official respondents. As per version of the Bank, some of the communications are issued in compliance of instructions issued by the higher authorities as well as Apex Bank.

7. Spearheading arguments on behalf of the petitioner-societies, learned counsel, Mr. A.K. Choudhary and Mr. Suresh Charan have articulated all the contentions raised in the petitions. The other learned counsels for the petitioners have adopted all these arguments. For substantiating their various contentions, learned counsel have placed reliance on the following legal precedents:-

(i) Greater Bombay Co-operative Bank Ltd. v. M/s. United Yarn Tex. Pvt. Ltd. & ors. [(2007) 6 SCC 236]

(ii) State of U.P. & Anr. v. C.O.D. Chheoki Employees'' Cooperative Society Ltd. & Ors. [(1997) 3 SCC 681]

(iii) M. Babu Rao & Ors. v. Deputy Registrar of Cooperative [2005 (4) ALD 582] [FB]

8. E. Converso, Dr. P.S. Bhati, learned Additional Advocate General assisted by Mr. S.S Rathore, submits that most of the impugned orders/communications have been issued by the Registrar to prevent irregular and fake loans to non-existent persons in the best interest of the beneficiaries, who are the poor farmers. Learned Additional Advocate General would contend that the object of issuance of various orders/communications by the Registrar is to serve the best interest of the aims and objects of the co-operative movement within the State. Learned counsel further submits that the order/communication dated 16/17th June, 2015, in relation to computerisation of PACS has been watered-down/ withdrawn, therefore, to that extent, the grievance of the petitioner-societies no more survives. Joining issue with the petitioner-societies on order/ communication dated 2nd of December, 2015, learned Additional Advocate General has urged that the Registrar has issued the same with laudable objects and therefore, the same cannot be allowed to be targeted at the behest of the petitioners as an attempt to circumscribe/curtail the powers of the petitioner-societies. Elaborating his submissions, in this behalf, Dr. Bhati submits that it is noticed by the Registrar that some of the PACS are maintaining pseudo accounts which are substantially hampering receipt of subsidy benefits etc. to the farmers/ peasant members of the society. Dr. Bhati has urged that order dated 2nd of December, 2015 is an affirmative attempt by the Registrar to check the incident of misappropriation/defalcation of money of the farmer members of the societies. Learned counsel, in substance, has urged that the impugned order/

communication dated 2nd of December, 2015 has no adverse effect on the financial status of PACS inasmuch as their commission in respect of KCC loans upto 2% interest has been kept intact. For clarifying the position, learned Additional Advocate General has also placed reliance on a communication dated 14th of October, 2015 (Annex.R/4) and urged with full emphasis that there is no lawful financial loss to the petitioner-societies on account of issuance of order/ communication dated 2nd of December, 2015.

9. Learned Additional Advocate General, while defending order/communication dated 11th of December, 2015, has vehemently argued that a cumulative reading of the same makes it abundantly clear that none of the rights of the petitioner-societies have been prejudiced by the said communication. While laying stress on the word "Madhyam" (through), learned counsel submits that KCC loans are required to be paid/disbursed to the loanees on recommendations of the petitioner-societies and therefore, in no way, the communication has curtailed powers of the petitioner-societies. Dr. Bhati has vociferously urged that no farmer members of the petitioner-societies have come-forward to ventilate their grievance against the impugned orders/communications itself is sufficient to non-suit all the petitioner-societies inasmuch as the real beneficiaries are farmer members of the petitioner-societies.

10. Dr. Bhati, while referring to Section 30-B of the Act of 2001, has urged that the impugned order/communication as such has no-where trenched into the autonomy of the petitioner-societies. It is submitted by the learned Additional Advocate General that in the matter of subsidy, i.e., interest free loans both Central Government as well as the State Government are the stakeholders to the extent of share of 4% and 3% respectively and therefore, it is rather difficult to comprehend that impugned order/communication dated 2nd of December, 2015 has directly or indirectly curtailed autonomy of the petitioner-societies. Learned Additional Advocate General has also referred to monitoring and reviewing KCC loans by State Level Monitoring and Reviewing Committee constituted under the Chairmanship of Secretary (Corporation of the State) for ensuring progress in implementation of the scheme by the cooperatives and to sort out the operation problems, if any, by the said committee. It is also submitted by the learned Additional Advocate General that being member of the committee, the Registrar has made sincere endeavour to closely monitor and review these schemes for strengthening the farmer members of the petitioner-societies, who are the real beneficiary. Lastly, the learned Additional Advocate General has fairly conceded that none of the impugned orders/communications are issued de-hors sub-section (6) of Section 51 of the act of 2001 and as per the submission of the learned Additional Advocate General these communications have not violated sub-section (6) of Section 51 of the Act of 2001. While referring to para 12 to 14 of the reply to the writ petition, learned Additional Advocate General has submitted, with all fairness, that all the impugned orders/communications are to yield to the mandate of sub-section (6) of Section 51 of the Act of 2001.

Learned counsel appearing for various District Central Cooperative Banks have reiterated the arguments of learned Additional Advocate General.

11. I have considered the arguments advanced at Bar by learned counsel for the parties on the touchstone of lis involved in all these petitions.

Upon objective analysis of factual matrix in conjunction with legal propositions adumbrated following questions have emerged for adjudication:-

(i) Applicability of the Banking Regulations Act, 1949 vis-a-vis Primary Agricultural Cooperative Societies (PACS).

(ii) Right of the petitioner-societies is to carry on banking business.

(iii) Authority/jurisdiction of the Registrar, Cooperative Societies for issuance of impugned order/communications.

(iv) Autonomy of the petitioner-societies in the internal financial and administrative matters.

(v) Disbursement of short-term crop loans to KCC holders through CBS Accounts as per order/communication dated 02.12.2015.

Now, I propose to deal with all these questions in chronological orders:-

(i) Applicability of the Banking Regulations Act, 1949 vis-a-vis Primary Agricultural Cooperative Societies (PACS).

(ii) Right of the petitioner-societies is to carry on banking business.

Section 3 of the Act of 1949 postulates applicability of the Act to cooperative societies, in certain cases, which reads as under:-

"3. Act to apply to co-operative societies in certain cases. - Nothing in this Act shall apply to -

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V."

A bare perusal of above quoted Section 3 of the Act of 1949 with non-obstante clause makes it abundantly clear that the provisions of the Act of 1949 are not applicable vis-a-vis a primary agricultural credit society.

Section 5(cciv) of the Act of 1949 defines primary agricultural credit Society, which reads as under:-

"primary agricultural credit society" means a cooperative society, -

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes

connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such cooperative society out of funds provided by the State Government for the purpose;"

If the definition of primary agricultural credit society, as envisaged under the Act of 1949, is compared with the definition of the same under the Act of 2001 then it would, ipso facto, reveal that there is no dichotomy, in this behalf, in both the legislation''s. As a matter of fact, under Section 2(qa) of the Act of 2001, same definition is adopted. Section 2(qa) of the Act of 2001, reads as under:-

"Primary agricultural credit society means a cooperative society as defined under Clause (xxiv) of Section 5 of Banking Regulation Act, 1949 (Central Act No.10 of 1949) and is registered under the Act."

It is also noteworthy that Section 2 (xa) of the Act of 2001, which was inserted by the Rajasthan Cooperative Societies (Amendment) Act , 2010 w.e.f. 16th October, 2009 likewise Section 2 (qa) of the Act of 2001 defines "short term cooperative credit structure society" which includes primary agricultural credit society. Under Section 22 of the Act of 1949, Reserve Bank can issue licence to any company to carry on banking business in India subject to such conditions as it may think fit to impose.

12. Supreme Court in case of Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. v. Maharashtra State Cooperative Bank Ltd. [(2003) 11 SCC 66] has laid emphasis that Reserve Bank of India under Section 22 of the Act of 1949 cannot grant a licence to any co-operative society to carry on banking business unless it is a State co-operative bank or a Central Cooperative bank or a Primary co-operative bank. The Court further put a rider that it would be necessary that a declaration under the National Bank for Agriculture and Rural Development Act, 1991 (NABARD Act) be first obtained regarding status of the cooperative society. The Court held:

"Under Section 22, as it stood prior to the amendment brought about by the Amendment Act of 1968 wherein Section 56 was inserted, RBI had right to issue license to companies to carry out banking business and no company could carry on a banking business unless it held a license issued by RBI. After the amendment certain types of cooperative societies, as were brought within the purview of the Banking Regulation Act, could be issued a license by RBI. Section 22, as amended, prohibits cooperative societies from carrying on banking business. The term "cooperative society", as used in Section 22, would include all types of cooperative societies. In other words, no cooperative society can carry on banking business unless it falls within the permitted categories set out in Section 22. The term "cooperative bank" has been defined under Section 5(cci) as a State cooperative bank, a Central cooperative bank and a primary cooperative bank. Thus the term "cooperative bank" does not include all cooperative societies. It only includes the above mentioned three types of societies. By virtue of Section 5(ccvii) the term "State cooperative bank" is to be understood as a state cooperative bank as defined in the NABARD Act. Thus, unless a cooperative society is a State cooperative bank or a Central cooperative bank or a primary cooperative bank (as defined under the NABARD Act), no license can be issued by RBI. In view of these clear provisions, it will have to be held that the stand taken by RBI in its letter dated 25-4-1994 was and is the correct stand."

Therefore, on harmonious construction of the various provisions of the Act of 1949 , NABARD Act as well as the Act of 2001, it is abundantly clear that provisions of the Act of 1949 are not applicable vis-a-vis primary agricultural credit societies.

However, a primary agricultural credit society cannot carry on banking business for want of its status akin to State Cooperative Bank or a Central Co-operative Bank or a Primary Cooperative Bank as defined under the NABARD Act.

13. The Division Bench of this Court in D.B. Civil Writ Petition (PIL) No.26/2013 (Sajjan Singh Bhati v. State of Rajasthan & Ors.), at the threshold, while relying on Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. (supra) passed following interim order:-

"As an interim measure, until further orders, the Central Registrar, Multi-State Cooperative Society, New Delhi, the Registrar, Cooperative Society, Rajasthan, Jaipur, the District Collectors, Barmer, Jaisalmer and Jodhpur and Director General of Police, Rajasthan will ensure that respondents Nos.9 to 12 or any other Multi-State Cooperative Society or the State Cooperative Society do not carry on any banking business in the State of Rajasthan, unless they have a licence under the Banking Regulation Act, 1949. These cooperative societies will not be allowed to carry on banking business namely, to take deposits, opening branches for its banking activities, installation and running of ATMs and distributing loans to the depositors. The respondents will not allow any banking business by the Multi-State Cooperative Society and the District Cooperative Society unless they have licence from the Reserve Bank of India under the Banking Regulation Act, 1949."

Later on, Division Bench considered the applications laid on behalf of respondent co-operative societies for modification of the stay order and while disposing of the these applications on 18th March, 2015 issued following directions as interim measures:-

"Looking to the factual position noticed above we deem it appropriate to dispose of the applications with following directions as interim measures :-

1. No Multi State Cooperative Society or any other cooperative society created and registered under the Multi State Cooperative Societies Act, 2002 or any

other State legislation including the Rajasthan Cooperative Societies Act, 2001, as the case may be, shall carry on "banking" activity as defined under Section 5(b) of the Banking Regulation Act, 1949;

2. The respondents Nos.9 to 13 (except the respondent No.11) shall be at liberty to carry on their activities as per applicable by-laws. While doing so, the cooperative societies shall ensure absolute compliance of the provisions of Multi State Cooperative Societies Act, 2002 including prohibitions and restrictions given therein;

3. The respondent No.11 shall be at liberty to carry on its activity as per applicable by-laws. While doing so, the society shall ensure absolute compliance of the provisions of the Rajasthan Cooperative Societies Act, 2001 including prohibitions and restrictions given therein;

4. The respondent cooperative societies shall confine their activities within the scope of applicable bylaws among their existing members only. If any cooperative society desires to provide its membership to any person, then that shall examine eligibility of such person as per applicable law and grant that by recording satisfaction of the competent authority to do so;

5. The respondent cooperative societies may publish or otherwise exhibit their activities by issuing advertisements but those shall be only for use and consumption of their members. No advertisement shall be issued by any of the respondent cooperative society to allure public at large to become its member or to avail benefit of its scheme without getting such advertisement approved by the Registrar, Multi State Cooperative Societies or the Registrar, Rajasthan State Cooperative Societies, as the case may be;

6. The Directors and other elected/nominated/appointed office bearers of the respondent cooperative societies shall furnish details of their identity, addresses and property (immovable as well as movable) to Deputy Registrar (Judicial) of this Court within a period of 15 days from today; and

7. The Registrar Multi State Cooperative Society, New Delhi and the Registrar, Cooperative Societies Rajasthan shall ensure compliance of the directions given by periodical inspection of the record of the respondent cooperative societies falling within their jurisdiction and also to report this Court about their functioning."

Finally, the writ petition (PIL) was decided on 14th May, 2015 and the said judgment is reported in [2015 (4) WLC (Raj.) 78]. The Division Bench while partly allowing the writ petition issued following directions:-

"19. The writ petition is partly allowed with a direction that respondents Nos.9 to 12 or any other Cooperative Societies or the Multi-State Cooperative Societies registered under the Rajasthan State Cooperative Societies Act, 2001 and the Multi-State Cooperative Societies Act, 2002 shall not accept deposits of any kind and under any scheme from public, including nominal members, ordinary members or the members of any category of these Societies, except after obtaining licence under Section 22 of the Banking Regulation Act, 1949.

20. The restriction will, however, not apply for repayment of the deposits for a period of three months. If licences are obtained within three months under Section 22 of the Banking Regulation Act, 1949, the respondents Nos.9 to 12 as well as other Cooperative Societies in the State of Rajasthan may be allowed to accept the deposits.

21. All the authorities of the State of Rajasthan will strictly enforce these aforesaid directions."

Against the judgment of Division Bench in case of Sajjan Singh Bhati (supra), five different SLPs were preferred by the respondents bearing SLP (C) Nos. 16316/2015, 9787/2015, 9869/2015, 9870/2015 and 9900/2015 respectively before the Apex Court. The Apex Court after hearing the learned senior counsels appearing for various petitioners passed following order on 28th May, 2015:-

"Issue notice on special leave petitions as well as on prayer for interim relief, returnable within four weeks.

In the meantime, there shall be stay of directions contained in paras 19 and 20 of the impugned judgment subject to the following arrangement in the interregnum:

(i) Earlier interim order dated 18.3.2015 passed by the High Court in D.B. Civil W.P. No.26/2013 shall continue in the meantime;

(ii) It is specifically reiterated that the petitioners shall not carry on ''banking'' activity as defined under Section 5 (b) of the Banking Regulation Act, 1949;

(iii) No deposits shall be taken from the nominal members;

(iv) No deposits shall be taken from the public, i.e. non-members.

(v) The fresh deposits that shall be taken from the members, shall carry such rate of interest that would not exceed the interest rate allowed by the Reserve Bank of India for nationalised banks."

In view of law laid down in Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. (supra), interim order passed by Division Bench of this Court on 18th March, 2015 in D.B. Civil Writ Petition (PIL) No.26/2013 (supra) and the interim order passed by the Apex Court in SLP(C) No.16316/2015, the petitioner societies cannot carry out banking activities. However, societies can very well cater the need of its members for availing credit facilities/financial assistance by espousing their cause. Further the societies can also carry on the activities within the scope of applicable bye-laws in strict adherence of sub-section (6) of Section 51 of the Act of 2001.

14. It is needless to observe here that from the facts averred in the writ petitions it is not borne out that petitioner-societies are enjoying the status akin to that of

State Co-operative Bank or a Central Co-operative Bank or a Primary Co-operative Bank as defined under the NABARD Act. The judgment of Supreme Court in Greater Bombay Co-operative Bank Ltd. (supra) on which learned counsel for the petitioners has placed reliance is, therefore, clearly distinguishable. In this verdict, Supreme Court has held that cooperative banks established under the Multi-State Co-operative Societies Act are not covered within the meaning ''banking company'' as defined in Section 5(c) of the Act of 1949 and therefore, provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 are not applicable for recovery of dues by the cooperatives. As such the Court has not considered the effect of Section 22 of the Act of 1949 and NABARD Act to examine the right of a cooperative society to carry on banking activity. The Full Bench judgment of Andhra Pradesh High Court in case of M. Babu Rao & Ors. (supra) is also of no assistance to the petitioner-societies in view of judgment of Supreme Court in Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. (supra), D.B. Judgment in Sajjan Singh Bhati (supra) and subsequent developments. Therefore, in totality, question (ii) is answered in negative and the petitioner societies cannot be permitted to carry on banking activities/business.

15. (iii) Authority/jurisdiction of the Registrar, Cooperative Societies for issuance of impugned order/communications.

Now, adverting to question (iii), suffice it to observe that none of the impugned communications of the Registrar, Co-operative Societies are indicative of the powers/authority of the Registrar to address these communications to the petitioner-societies.

Although, in the return, respondent-State has referred to minutes of the meeting of NABARD dated 11th of July 2015, but the minutes of the meeting have not been placed on record. Moreover, except communication dated 8th of September, 2015 in all subsequent orders/communications, there is no inkling about the minutes of the meeting dated 11th of July, 2015 of NABARD. The order/communication dated 2nd of December, 2015 is also conspicuously silent about the minutes of the meeting dated 11th of July, 2015.

There is yet another vital aspect of the matter, which cannot lose sight of the Court, more particularly, when the State authorities are defending their action under the Act of 2001. As a matter of fact, reply/affidavit on behalf of State as well as Registrar, Co-operative Societies is submitted by the Managing Director of the District Central Co-operative Bank, in the capacity of officer-in-charge, however, there is no whisper in the affidavit that, on whose behalf, he is acting as an officer-in-charge. Moreover, his status as an officer of the State is also not disclosed in the affidavit. How and in what manner, a Managing Director of a District Central Co-operative Bank can purport to act as an officer-in-charge on behalf of the State and its functionary i.e. Registrar is rather difficult to fathom. Therefore, reply as such though purported to have been filed on behalf of the State as well as the Registrar, Co-operative Societies but I am at loss to say that the same cannot be construed as a reply/affidavit on behalf of the State and the Registrar. For ready reference affidavit in support of reply on behalf of official respondents Nos.1 & 2 in S.B. Civil Writ Petition No.2837/2016 is reproduced as under:-

I, Alok Choudhary S/o Shri Heera Lal Jain, aged about 43 years, working as Managing Director, Central Co-operative Bank Ltd., Chittorgarh, do hereby take oath and state as under:-

1. That I am the Officer Incharge in this case and am fully conversant with the facts of the present case.

2. That the contents of the said reply are true as per official record and nothing has been concealed therein.

3. That the contents of the said reply have been drafted by my counsel under my instructions.

Deponent

Verification:

I, above named deponent do hereby verify that the contents of Para no.1 to 3 of the said affidavit are true and correct to my personal knowledge, nothing has been concealed herein. So Help Me God.

Deponent

1. For the sake of argument, even if reply is to be taken into account, in the considered opinion of this Court, the same is conspicuously silent on various vital issues raised by the petitioners. The reply/affidavit even if relied upon cannot render any assistance to cause of the respondent-State being vague, cryptic and evasive.

2. Upon delving deep into the matter and examining the scheme of the Act of 2001, I am afraid, respondent-State has miserably failed to lay its hands on any provision under the Act of 2001 to defend all impugned communications. At this stage it would be just and proper to refer to the facts pleaded in para 12 to 14 of the reply coupled with candid admission of the learned Additional Advocate General. In view of concession made by the learned AAG, order/communication dated 16/17 June, 2015 is treated as partially withdrawn/watered-down and the rest of the impugned orders/communications be construed as enforceable vis-a-vis petitioner-societies subject to sub-section (6) of Section 51 of the Act of 2001. Therefore, all the impugned orders/communications be treated as subservient to sub-Section (6) of Section 51 of the Act of 2001 qua petitioner-societies. This sort of situation facilitates answer of question No.(iii) accordingly.

16. (iv) Autonomy of the petitioner-societies in the internal financial and administrative matters.

3. The pivotal question now remains to be addressed hovers around the

autonomy of petitioner-societies in the financial and administrative matters. Section 3 of the Act of 2001 mandates promotion of cooperative movement. The co-operative movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It is an organisation run by a group of people who each have a say in its management and a financial interest in its profitability. It may be a group of producers such as farmers, consumers in retail co-operative societies or the workers.

4. Constitution Bench of Supreme Court in Daman Singh & Ors. v. State of Punjab & Ors. [(1985) 2 SCC 670], while dealing with the powers of the Registrar under Section 13(8) of the Punjab Cooperative Societies Act, 1961 for amalgamation of cooperative societies, held:

"...The very philosophy and concept of the cooperative movement is impregnated with the public interest and the amalgamation of cooperative societies when such amalgamation is in the interest of the cooperative societies is certainly in the public interest or can only be to secure the proper management of the societies. The argument of the learned counsel is an attempt at hairsplitting and is rejected."

5. In later judgment, Supreme Court in case of Myurdhwaj Cooperative Group Housing Society Ltd. v. Presiding Officer, Delhi Cooperative Tribunal & Ors. [(1998) 6 SCC 39] has again reiterated spirit or objectives of creation of cooperative societies. The Court held:-

"...The cooperative society is formed with laudable objective to inculcate spirit to work in a group freely for rendering benefit to its members through the cooperative contributions. This is only possible by conferring wide range of discretion on a society, not restricting its discretion''s by interpreting a law otherwise. This has to be for furthering the cause of cooperative movement. That is why various rigours of laws including taxes and fees are diluted for enhancing the spirit of the cooperative movement. We have no hesitation to hold that the power of society cannot be circumvented within Rule 36 in a case of default by its member of any of his dues. Such an interpretation would be contradictory to the very cooperative spirit or objectives of the creation of cooperative societies."

6. With increasing demand from proponents of an autonomous cooperative movement and reforms in the Cooperative laws, the Government constituted a Committee on Cooperative Law for Democratization and Professionalization of Management in Cooperatives in 1985, headed by Shri K.N. Ardhanareeswaran. The Committee recommended the deletion of those legal provisions in State Cooperative Acts, which militate against the democratic character and autonomy of cooperatives, and also recommended incorporation of several provisions which could activize democratic processes for infusing professional management into cooperatives. In the year 2002, the Government of India enunciated a National

Cooperative Policy. The objective of the policy is to facilitate an all round development of cooperatives in the country. The policy promises to provide cooperatives with the necessary support, encouragement and assistance, to ensure their functioning as autonomous, self-reliant and democratically managed institutions, accountable to their members, and making a significant contribution to the national economy.

7. It is in that background State Cooperative Societies Acts were amended thoroughly and under the Act of 2001 besides many other provisions Section 30-B is inserted envisaging autonomy in all financial and internal administrative matters to short-term credit cooperative society. Section 30-B of the Act of 2001 reads as under:-

"Section 30-B. Autonomy in all financial and internal administrative matters.—Notwithstanding anything contained in this Act or any other law for the time being in force, a short term co-operative credit structure society shall have autonomy in all its financial and internal administrative matters including the following areas, namely:-

(a) personnel policy, staffing, recruitment, posting and compensation to staff;

(b) issues relating to affiliation and disaffiliation with any federal structure of its choice including entry and exit at any level;

(c) area of operation according to its business requirements; and

(d) internal control systems."

8. The language employed under Section 30-B of the Act of 2001 is clear and unambiguous inasmuch as Legislature in its wisdom has conferred wide range of autonomy to a short-term cooperative credit structure society which includes a primary agricultural credit society. Therefore, any attempt by the Registrar to trench into the autonomy of the petitioner-societies in all financial and administrative matters cannot be countenanced as per mandate of Section 30-B of the Act of 2001. It is also noteworthy that subsection (6) of Section 51 under the caption "LENDING POLICY" a special autonomy/latitude is given to a short-term co-operative credit structure society for determining and deciding its loan policies and individual loans to its members in furtherance of the interest of the societies and its members.

9. That apart Section 125 of the Act of 2001 which authorises the Registrar to rescind certain resolutions. Proviso to sub-section (1) of Section 125 of the Act of 2001 circumscribes the powers of the Registrar vis-a-vis short-term co-operative credit structure societies so as not to curtail any of the freedom or powers of such a society under the Act of 2001. Therefore, in totality, the autonomy petitioner-societies is sacrosanct and cannot be allowed to be tinkered with by any State authorities including Registrar at their whims and fancies.

10. In this behalf reference can also be made to the judgment in case of Chheoki

Employees'' Cooperative Society Ltd. (supra) wherein Supreme Court has held that cooperative society represents as corporate aggregate.

17. (v) Disbursement of short-term crop loans to KCC holders through CBS Accounts as per order/communication dated 02.12.2015.

11. Rival parties have locked horns on this vital question with full gusto. Mainly the petitioners have questioned legality and propriety of order/communication dated 2nd of December, 2015 on the anvil of transgressing the autonomy of petitioner-societies and detrimental to their business interests. Per contra, respondents have defended their action on the plea of directives of NABARD and the pious object behind it in the larger interest of peasant/farmer members of the societies, who are the real beneficiary of interest subsidy etc.

12. Well it is true that order dated 2nd of December, 2015 by the Registrar, Co-operative Societies has put certain checks and riders in the matter of disbursement of KCC loans by directing the Managing Director of the Apex Bank and the concerned District Central Co-operative Banks not to disburse the amount by cash/demand draft or any other mode by making entry in the saving bank account to be maintained at the District Central Co-operative Bank level in the loan account. Suffice it to state that this sort of arrangement is with laudable object and cannot be categorized as curtailing the powers of the petitioner-societies. The solemn object behind such directives appears to be a genuine effect of preventing pilferage/misappropriation of the loan amount to be disbursed to the members of the society and it will definitely serve the purpose of formation of the primary agricultural credit societies in the best interest of its members. This sort of arrangement was will also prove an effective mechanism to scuttle maintaining of pseudo loan accounts at PACS level so that subsidy benefits may reach the deserved farmer members of the societies. The Scheme of DBT is otherwise also in the larger public interest inasmuch as the Central Government is applying the said scheme uniformly vis-a-vis other subsidies including consumer subsidy.

13. In a broader perspective keeping in view basic tenets of cooperative law in the present era, directions/order dated 2nd of December, 2015 issued by the Registrar though amounts to trenching into the autonomy of the petitioner-societies and the said communication/order may have some ramification on the functioning of the petitioner-societies but then considering the aims and objects of the formation of the petitioner-societies as paramount and in the best interest of their agriculturist-members, I do not feel persuaded to upset the said order/ communication.

14. Jurisdiction under Article 226 of the Constitution of India is based on equitable considerations and while applying ethos of equity, justice and good conscience, it would be inappropriate for this Court to upset the said order/ communication even if found to be unauthorized or allegedly without jurisdiction. The Court feels that the underlying object of the order/communication dated 2nd

of December, 2015 is in best interest of the true beneficiaries of K.C.C. Loans namely peasant/farmer members of the petitioner-societies so as to prevent/ check spurious loaning, misappropriation and pilferage of loans. Moreover, this sort of loaning systems would streamline interest subsidies paving the way for genuine farmer to reap its fruits.

15. The argument of the learned Additional Advocate General questioning locus of the petitioner-societies to maintain writ petition is quite alluring but not of substance keeping in view status of the individual petitioner-society as body-corporate under Section 7 of the Act of 2001. Therefore, the contention is rejected.

16. The upshot of above discussion is that all these petitions are partly allowed and the following directions are issued :-

(i) Respondents may not construe the impugned orders/directions dated 16/17th June, 2015, 30th June, 2015, 1st of July, 2015, 5th of October, 2015, 17th February, 2016 and 20th of February, 2016 to the detriment of the petitioner-societies to cater need of the its members for availing credit facilities/financial assistance by espousing their cause and to carry on other activities within the scope of applicable bye-laws in strict adherence of sub-section (6) of Section 51 of the Act of 2001.

(ii) The order/communication dated 16/17th June, 2015 be treated as redundant and inoperative vis-à-vis petitioner-societies to the extent of computerisation of petitioner-societies in view of concession made by learned Additional Advocate General.

(iii) The communication dated 2nd of December, 2015 and the subsequent orders/ communications i.e. 11th of December, 2015 and 31st of March, 2016 are upheld subject to the condition that these communications may not cause lawful financial loss to the petitioner-societies and in no way undermine their authority as espouser of the cause of peasant/farmer members of these societies.

(iv) It is declared that although Act of 1949 is not applicable vis-à-vis petitioner-societies but the petitioner-societies are not entitled to carry on banking activities as their status is not akin to Apex Cooperative Bank, District Central Cooperative Bank and Primary Cooperative Bank in want of declaration as such under Section 2(u) proviso of the NABARD Act and without licence of banking under Section 22 of the Act of 1949.

(v) The respondents are directed to ensure complete autonomy to the petitioner-societies in all financial and internal administrative matters as mandated by Section 30-B of the Act of 2001. The respondents are further expected to make endeavour for promotion of cooperative movement by providing necessary support, encouragement and assistance to the cooperative societies and also to depoliticize cooperatives in adherence of National Cooperative Policy, 2002.

(vi) It is further directed that respondents may take effective measures in the best interest of petitioner-societies, which are at the grass-root level so that the peasant/farmer members of the societies may reap the fruits of various welfare schemes, interest subsidy and all other subsidies for which they are entitled.

(vii) The respondents are also expected to float such schemes which may prove beneficial in revamping the petitioner-societies and augment their financial self-reliance for strengthening three tier short-term cooperative credit delivery system.

17. Costs are made easy.

18. A copy of this order be placed in all these files.