

**(2010) 04 AHC CK 0124**  
**In the Allahabad High Court**

|                                                           |            |
|-----------------------------------------------------------|------------|
| U.P. Postal Primary Cooperative Bank Limited              | APPELLANT  |
| Vs                                                        |            |
| Hemant Kumar and Others and Smt. Mohini Shukla and Others | RESPONDENT |

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**Date of Decision :** 15-04-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 144  
Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 9

**Citation :** (2010) 5 AWC 4939

**Hon'ble Judges :** Narayan Shukla, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Narayan Shukla, J.—Being aggrieved with the order dated 3rd of February, 2010, passed by the Cooperative Tribunal, State of U.P., Lucknow, the petitioner has preferred the present writ petitions.

2. By means of order impugned the Cooperative Tribunal has set aside the order dated 7th of September, 2005, passed by the Deputy Registrar, Cooperative Societies, State of U.P., Lucknow being without jurisdiction.

3. Briefly the facts of the case are that initially the petitioner was registered as a Primary Cooperative Society under the Cooperative Societies Act, 1912. After enactment of U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the U.P. Act), it was registered as a Primary Cooperative Society under the said Act by virtue of Section 131 (1) of the U.P. Act. In the year 1984 the Multi Cooperative Societies Act, 1984 (Central Act), which is akin to the U.P. Cooperative Societies Act, 1965, was enacted with the object to govern the Cooperative Societies, which are functioning in more than one State. The petitioner was functioning in the whole State of U.P. under the U.P. Act. Owing to enactment of the Reorganization Act, 2000 and carving out a new State i.e. State of Uttaranchal, the Central Government created a new Uttaranchal postal Circle for the State of

Uttaranchal by means of notification dated 15th of January, 2001. The subject of notification is "Creation of New Postal Circle viz Uttaranchal subsequent to the formation of new Uttaranchal State." It provides that in pursuance of the Directorate memo No. 30-10/2001-P.E.-II dated 12.1.2001 the approval of Hon"ble President of India is hereby conveyed for creation of New Postal Circle viz Uttaranchal by converting the existing Regions in those areas carved out of U.P. Circle. It further provided that the Head quarters of New Uttaranchal Postal Circle will be Dehradun and the Head quarter of existing U.P. Postal Circle will continue to be the same i.e. Lucknow. By the same very notification the jurisdiction of newly created Uttaranchal Postal Circle and jurisdiction of existing U.P. Circle was bifurcated. Thus both the circles started functioning in their respective areas.

4. The dispute arose when a show cause notice was issued to Shri Hemant Kumar on 15th of March, 2001 as to why he should not be removed u/s 38(2) of the U.P. Act, 1965 for being elected for the third term as a Member of the Committee of Management as well as Vice Chairman of the Committee of Management, being in violation of the Rule 449(1) of the said Act. Mr. Hemant Kumar challenged the said show cause notice before this Court through a writ petition No. 1261 (MB) of 2001, thereby he raised question of jurisdiction of Deputy Registrar of the Cooperative Societies on the ground that by virtue of U.P. Reorganization Act 2000, the Multi State Cooperative Societies Act, 1984 has come into play and the Society in question is governed under the said Act having become a Multi State Cooperative Society w.e.f. 9th of November, 2000.

5. This Court by means of interim order dated 21st of March, 2001 issued direction to the Registrar of the Cooperative Societies State of U.P. to take decision in the matter including on the question of jurisdiction. On 25th of April, 2001 the Deputy Registrar of the Cooperative Societies, State of U.P., Lucknow Division, Lucknow passed an order u/s 38(2) of the State Act removing Shri Hemant Kumar from the post of Vice Chairman of the Committee of Management of the Bank. On 13th of June, 2001 the Deputy Registrar, also issued a charge sheet to the Committee of Management of the U.P. Postal Primary Cooperative Bank for its action being in violation of the provisions of the said Act and Rules framed there under.

6. The Committee of Management of the Bank challenged the same before this Court by filing a writ petition No. 3439 (MB) of 2001. This Court by means of interim order dated 8th of August, 2001 provided that till the next date of listing the Registrar, Cooperative Societies shall not take any adverse action against the petitioner in pursuance of the impugned notice. The bank also filed another writ petition No. 5671 (MB) of 2002 challenging the action of the State Government for illegal appointment being made by the then Committee of Management. This Court decided the said writ petition by means of final judgment and order dated 2nd December, 2002 holding therein that the U.P. Postal Primary Cooperative Bank and the U.P. Processing and Cold Storage Federation Ltd. are not the Multi

State Cooperative Societies, therefore, the provisions of the Multi State Cooperative Societies Act, 1984 shall have no application to it and the society will continue to remain governed by the U.P. Cooperative Societies Act. This Court also issued direction to hold election of the Committee of Management of the Society at the earliest.

7. The said order was challenged by one Shri Naresh Shanker Srivastava before the Hon''ble Supreme Court through SLP No. 23782 of 2002. The Hon''ble Supreme Court allowed the appeal and set aside the order passed by the High Court and permitted the High Court to decide a fresh in accordance with law alongwith other connected pending writ petitions. In the meantime the Deputy Registrar also issued a supplementary charge sheet on 22.12.2004 to the Committee of Management and also passed an order on 7th of September, 2005 holding therein that Shri Hemant Kumar is guilty of regular payment of Rs. 5,50,000/- towards the construction of the Bank and issued direction to recover the amount of Rs. 2,75,000/- alongwith 11% simple interest from him.

8. Thereafter all the writ petitions were clubbed together and heard by this Court. This Court decided all the writ petitions by means of common judgment and order dated 10th of November, 2004 holding therein that U.P. Postal Primary Cooperative Bank Limited shall be governed by the provisions of U.P. Cooperative Societies Act, 1965. Challenging the said order Shri Hemant Kumar, Vice Chairman of the Committee of Management of the Bank and the Bank itself filed separate Special Leave Petitions before the Hon''ble Supreme Court. The Hon''ble Supreme Court refused to grant stay by means of order dated 5th of January, 2005. Civil Appeal No. 291 of 2005 and Civil Appeal No. 8020 of 2004 filed by the U.P. Postal Primary Cooperative bank and the Committee of Management of the Bank were dismissed as withdrawn by means of order dated 2nd of May, 2006, on the ground that the Committee of Management of the Bank has passed a resolution that the U.P. Postal Bank shall remain to be governed under the provisions of the State Act and kept another appeals pending for final disposal. In the meantime on 4th of August, 2006 the Society amended its Bye-laws with regard to its area of operation in its General Body meeting dated 13.2.2006 and restricted the operation of its area within the territory of U.P. Postal Circle. On 22nd June, 2009 the Reserve Bank of India also permitted the petitioner to shift its Branches situated at Dehradun and Nainital in State of Uttaranchal at Gautam Budh Nagar and Mahoba in the State of U.P. The Bank also issued public notice to this effect.

9. The Hon''ble Supreme Court allowed the appeals of Naresh Shanker Srivastava by means of judgment and order dated 6th of May, 2009 and held that the U.P. Cooperative Processing and Cold Storage Federation Limited is a Multi State Cooperative Society deemed registered under the corresponding provision of the Multi-State Act, 1984 from the date of the reorganization of the State of Uttar Pradesh and set aside the order dated 10th of November, 2004 of the High Court.

10. Being in agreement with the decision given in Naresh Shanker Srivastava''s

case the Hon''ble Supreme Court set aside the judgment and order passed by this Court in Hemant Kumar''s case also by means of order dated 20th of October, 2009 and held that the respondent No. 3 Society shall be deemed to be a Multi State Cooperative Society by virtue of deeming provisions of Section 95 of the Multi State Act. However, Hon''ble Supreme Court clarified that if there have been any change in the bye-laws of the Society, it will be open to it to agitate the issue in accordance with law.

11. After the aforesaid judgment of the Hon''ble Supreme Court, Mr. Hemant Kumar filed another writ petition before this Court bearing writ petition No. 10257 (MB) of 2009 for reinstatement of the Committee of Management, which was suspended by means of order dated 19th of November, 2004 passed by the Deputy Registrar, Cooperative Societies and for restraining the existing Committee of Management of U.P. Postal Primary Cooperative Bank Limited, Lucknow from managing and controlling the affairs of U.P. Postal Primary Cooperative Bank Limited, Lucknow alongwith certain other prayers. The Division Bench of this Court disposed of the writ petition finally on 23rd of December, 2009 with the direction to the Registrar of the Cooperative Societies to decide the petitioner''s representation. Pursuant to which the Central Registrar of Cooperative Societies passed an order on 22nd of January, 2010, whereby he rejected the representations of Mr. Hemant Kumar. He took note of subsequent developments happened in the matter and observed that the area of operation of the Society prior to bifurcation of the Society in two States of Uttar Pradesh and Uttaranchal was U.P. Postal and R.M.S. Circle and not the State of U.P. and even after the amendment of bye-laws of the Society on 4th of August, 2006 the area of operation of Society remains unchanged i.e. U.P. Postal Circle which falls within the territory of the State of U.P. and further observed that U.P. Postal Primary Circle continues to serve only the members of U.P. Postal Circle even after the bifurcation of the State of U.P.

12. Mr. Hemant Kumar has again challenged the order passed by the Central Registrar before the Division Bench of this Court through the writ petition No. 1892 (MB) of 2010, in which, as an interim measure, it has been provided that till the next date of listing the Society shall not incur any financial liability nor shall alienate the assets of the Bank and shall not make any appointment, but would be entitled to draw the money for day to day business and for necessary banking transactions.

13. Before this Court the order of the Cooperative Tribunal is under challenge, whereby the Tribunal has set aside the surcharge order dated 7th of September, 2005, passed by the Deputy Registrar, Cooperative Societies, Lucknow, on the ground that once the Hon''ble Supreme Court has accepted the U.P. Postal Primary Cooperative Bank Limited, Lucknow as Multi State Cooperative Society, the Deputy Registrar functioning under the U.P.Act had no jurisdiction to exercise the power provided u/s 68 of the U.P.Act. Accordingly it has held that the order passed by the Deputy Registrar in exercise of power provided u/s 68(2) of the

U.P. Act is without jurisdiction.

14. In the light of the aforesaid fact Dr. L.P. Mishra, learned Counsel for the petitioners submits that once the Hon"ble Supreme Court in taking decision in the matter of Hemand Kumar clarified that if there have been any change in the Bye-laws of the Society it will be open to it to agitate the issue in accordance with law and the Central Registrar, who is the registering authority of the Multi State Societies had observed that the Society in question is governed under the U.P. Act keeping in view the changed facts and circumstances of the case, it is not open for the petitioner to claim still to be governed under the Multi State Act. He further submits that on the date of surcharge order i.e. on 7th of September, 2005 the decision of the Division Bench of this Court dated 10th of November, 2004, when the order of the Hon"ble Supreme Court refusing stay was passed on 5th of January, 2005, was well operative, therefore, in the light of the aforesaid facts as well as the changed circumstances, which has been taken into consideration by the Central Registrar, it cannot be said that the order passed by the Deputy Registrar is without jurisdiction.

15. He further submits that even if the order passed by the Central Registrar, which is under challenge before the Division Bench of this Court is ignored, de facto doctrine will apply in the case under which the order passed by the Deputy Registrar is saved. In support of his submissions he cited the decision of Gokaraju Rangaraju Vs. State of Andhra Pradesh, , in which the question for consideration before the Hon"ble Supreme Court was "what is the effect of the declaration by the Supreme Court that the appointment of an Additional Sessions Judge was invalid on judgments pronounced by the Judge prior to such declaration. The relevant paragraphs 4, 17 and 19 of the judgment, which find answer of the Hon"ble Supreme Court are reproduced hereunder:

4. We are unable to agree with the submissions of the learned Counsel for the appellants. The doctrine is now well established that "the acts of the officers do facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure" (Pulin Behari v. King-Emperor reported in 1912 (15) CLJ 517 ). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office do facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine" vide Immediseti Ramkrishnaiah Sons, Anakapalli and Others Vs. State of Andhra Pradesh and Another, .

17. A Judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is

defective and may later be found to be defective. Whatever be the defect of his title to the office, judgment pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawful, have the same efficacy as judgments pronounced and acts done by a judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private title cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against his judgment is, of course, such a collateral attack.

19. In our view, the de facto doctrine furnishes an answer to the submissions of Shri Phadke based on Section 9, Criminal Procedure Code and Article 21 of the Constitution. The judges who rejected the appeal in one case and convicted the accused in the other case were not mere usurpers or intruders but were persons who discharged the functions and duties of judges under colour of lawful authority. We are concerned with the office that the judges purported to hold. We are not concerned with the particular incumbents of the office. So long as the office was validly created, it matters not that the incumbents was not validly appointed. A person appointed as a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed. It would be a different matter if the constitution of the court itself is under challenge. We are not concerned with such a situation in the instant cases. We, therefore, find no force in any of the submissions of the learned Counsel.

16. Another case is *A.R. Sircar (Dr) v. State of U.P.*, 1993 Supp.(2) SCC 734. In this case the Hon'ble Supreme Court held that generally decisions taken on a file under any law or rule in force which is later declared unconstitutional are saved under the de facto doctrine. Thus in the light of the aforesaid facts and circumstances as well as law laid down by the Hon'ble Supreme Court Mr. Mishra submitted that surcharge order passed by the Deputy Registrar, Cooperative Societies, State of U.P. is well within his jurisdiction and the order impugned suffers from error, which deserves to be quashed.

17. Mr. Amit Bose and Mr. Rakesh Srivastava, learned Counsels for the opposite parties raised objection against the maintainability of the writ petition, on the ground that the writ petition is posed to have been filed by the Society through its Secretary, whereas the contents of the petition have been verified by one Shri Sanjay Shukla, who is the Assistant Accountant. They invited the attention of this Court towards the Bye-laws of the Society, paragraph 10 (gha) of which provides the powers of the Secretary and Sub-clause (gha) of which speaks that the Secretary shall sign and certify the documents for and on behalf of the Bank. He further submits that the Secretary cannot delegate his powers to others.

18. It is further stated that Section 31(2) (d) of the U.P. Cooperative Societies Act, 1965 provides that the Secretary shall be the Chief Executive Officer of the society and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the society shall sign and authenticate all documents for and on behalf of the society. Section 52 of the Multi State Cooperative Societies Act, 2002 provides that the Chief Executive shall under the general superintendence, direction and control of the board, exercise the powers and discharge the functions, namely, signing on the documents for and on behalf of the multi-State co-operative society. They submit that the writ petition which has not been signed by the Secretary cannot be treated the writ petition on behalf of the Society, accordingly it is liable to be dismissed as not maintainable.

19. On merit of the case they placed the provisions of Section 103(1) of the Multi-State Co-operative Societies Act, 2002, which is analogous to Section 95(1) of 1984 Act, which is reproduced as under:

103. Co-Operative Societies functioning immediately before reorganization of States.-(1) Where, by virtue of the provisions of Part II of the State Reorganization Act, 1956 (37 of 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.

and submitted that under the aforesaid deeming clause the petitioner's Society became Multi-State Cooperative Society and also registered as such on the date of reorganization of State i.e. 9th of November, 2000, therefore, from that very date the Deputy Registrar as well as the Registrar and other officers who are authorized to act under the State Act became functus officio from that very date under the deeming clause, for which no declaration of any authority or court was required.

20. When the show cause notice was issued by the Deputy Registrar of the

Cooperative Societies, Mr. Hemant Kumar challenged the same before this Court and thereafter also challenged the order of renewal before this Court, though the Division Bench of this Court held that the petitioner's Society is not a Multi State Cooperative Society, but the Hon''ble Supreme Court has set aside the order passed by the Division Bench of this Court and has declared it the Multi-State Cooperative Society from the date of reorganization of State. Under the circumstances the petitioner's Society shall be treated as Multi-State Cooperative Society from the date of reorganization and all the actions taken by the authorities under the U.P. Cooperative Societies Act and order passed by them under the said Act have become non est.

21. They further submitted that once the order passed by the Division Bench of this Court was under adjudication of the Hon''ble Supreme Court, the doctrine of lis pendence shall apply and after setting aside the order of this Court by the Hon''ble Supreme Court, the order passed during the pendency of lis shall lost its force under the aforesaid doctrine.

22. He further invited the attention of this Court towards Section 144 of the Code of Civil Procedure, 1908, which is reproduced hereunder:

144. Application for restitution-(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

Explanation.- For the purposes of Sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,-

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under Sub-section (1).

and submitted that after the order of Hon''ble Supreme Court, Mr. Hemant Kumar has assumed his earlier position in the office in light of the aforesaid provisions.

23. On the de facto doctrine they also cited the case of Shri Ranajoy Bose Vs. Shri A.B. Roy and Another, , in which the Hon''ble Supreme Court has held that if the authority, who granted consent for launching prosecution in the case, had not been vested with such power under the statute then question of applying the "de facto doctrine" to the order passed by such incorporated authority does not arise.

24. He further cited the case of Union of India and Another Vs. Charanjit S. Gill and Others, and he submitted that in the aforesaid case the Hon''ble Supreme Court has held that the proceedings of any court Martial, if already challenged on the ground of jurisdiction and are pending adjudication in any court in the country would, however, be not governed by the principles of "do facto doctrine".

25. In another case i.e. Central Bank of India Vs. C. Bernard, the Hon''ble Supreme Court discussed the application of de facto doctrine. The de facto doctrine has two requisites, namely, (i) the possession of the office and the performance of the duties attached thereto, and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. According to this doctrine the acts of officers de facto performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by de jure officers. It further held that the de facto doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office. The Hon''ble Supreme Court further held that de facto doctrine does not come to the rescue of an intruder or usurper or a total stranger to the office. Obviously the doctrine can have no application to the case of a person who is not the holder of an office. In another case i.e. Beopar Sahayak (P) Ltd. and Others Vs. Vishwa Nath and Others, the Hon''ble Supreme Court further considered the de facto doctrine by following the decision rendered in the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, and has expressed the same view.

26. He also cited a case i.e. State of U.P. Vs. Rafiquddin and Others, , in which the Hon''ble Supreme Court discussed the de facto doctrine. The Hon''ble Supreme Court held that even though the appointment of the judicial officers was not in accordance with law, but the judgment and orders passed by them are not rendered invalid as they are not usurpers of office, they were appointed by the competent authority to the posts of Munsifs with the concurrence of the High Court, though they had not been found suitable for appointment according to the norms fixed by the Public Service Commission. They have been working in the judicial service during all these years and some of them have been promoted also and they have performed their functions and duties as de facto judicial

officers. The Hon''ble Supreme Court further held that a person who is ineligible to judgeship, but who has nevertheless been duly appointed and who exercises the powers and duties of the office is a de facto judge, he acts validly until he is properly removed. Judgment and orders of a de facto judge cannot be challenged on the ground of his ineligibility for appointment. This doctrine is founded upon sound principles of public policy and justice.

27. The learned Counsel for the opposite parties further submitted that once the Hon''ble Supreme Court rendered the judgment and declared the society in question as Multi State Cooperative Society by setting aside the judgment and order passed by this Court, it takes effect with effect from the date of reorganization of State. He further cited following several cases:

1. Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, .
2. Smt. Shanti Devi and Another Vs. Hukum Chand,
3. Lily Thomas, Vs. Union of India and Others, .
4. Sarwan Kumar and Another Vs. Madan Lal Aggarwal,
5. M.A. Murthy Vs. State of Karnataka and Others,
6. Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others,
7. P.V. George and Others Vs. State of Kerala and Others,
8. Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, .
9. General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others, .
10. State of Kerala v. Puthenkavu N.S.S. Karayogam and another, (2001) 10 SCC 191
11. Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, .
12. : (2004) 10 SCC 162 Vithal v. State of Karnataka
13. Raj Kumar Vs. Sardari Lal and Others,
14. (2006) 13 SCC 608 Sanjay Verma v. Manik Roy.
15. Pratap Rai Tanwani and Another Vs. Uttam Chand and Another,
16. Bihar Finance Service H.C. Coop. Soc. Ltd. Vs. Gautam Goswami and Others,
28. In the aforesaid cases, the Hon''ble Supreme Court has discussed the retrospective effect of the judgments of the courts and held that it is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an

existing law. It has also been held that when the court decides that the interpretation given to a particular provision earlier was not legal, it declared the law as it stood right from the beginning as per its decision, it would be deemed that the law was never otherwise.

29. Under the strength of the aforesaid decisions they submitted that once the Society in question has been declared as Multi State Cooperative Society from the date of reorganization of State, whole actions taken under the State Act either by the Registrar or by other subordinate officers, shall become non est. Accordingly they submit that there is no error in the order impugned passed by the Cooperative Tribunal, which has held that the Deputy Registrar was not having jurisdiction to pass the order in exercise of power provided under the said Act.

30. Being in agreement with the decision rendered in the case of Naresh Shanker Srivastava, the Hon''ble Supreme Court set aside the judgment and order passed by the Division Bench of this Court and declared the status of the petitioner's Society as a Multi-State Cooperative Society under the deeming provisions of Section 95 of the Multi-State Act. Upon perusal of the judgment of Hon''ble Supreme Court it is evident that the learned Senior counsel appearing on behalf of the Society submitted before the Hon''ble Supreme Court that in view of amendment of bye-laws of the Society, no relief can be granted to the appellant, but the Hon''ble Supreme Court disagreed with him on the ground that such a plea was never raised nor dealt with by the High Court. The Hon''ble Supreme Court further observed that even at the time of hearing of the appeals, no factual distinction in individual cases was brought to the notice of the court. However, the Hon''ble Supreme Court clarified that if there have been any changes in the bye-laws of the Society, it will be open to it to agitate the issue in accordance with law. Thus it is obvious that either it is the appeal of Naresh Shanker Srivastava or of Mr. Hemant Kumar all have been decided only on the legal issue raised before the Hon''ble Supreme Court. The Hon''ble Supreme court discussed the provisions of Section 95 of the Multi State Cooperative Societies Act, 1984. The relevant sub-paragraph (1) of which is reproduced hereunder:

95. Co-operative societies functioning immediately before reorganisation of States.-(1) Where by virtue of the provisions of Part II of the States Reorganisation Act, 1956, or any other enactment relating to reorganisation of States any co-operative society which immediately before the day on which the reorganisation 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, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.

31. The Hon''ble Supreme Court discussed the purpose of insertion of Section 95 in paragraph 17 of the judgment, which is reproduced hereunder:

17. As noted earlier, Section 95 of the Multi-State Act takes care of a situation arising out of re-organization of States of certain class of co-operative societies. Indeed, the very rationale or legal justification of having such a provision in the statute book is to provide continuity to those co-operative societies, the objects of which were confined to one State immediately before the day on which the re-organisation takes place but as from the day of the re-organisation of the State its object extends to more than one State, by declaring that such co-operative societies shall be deemed to be a multi state co-operative societies, registered under the corresponding provisions of the Multi-State Act. The very purpose of having this kind of provision is to stop the applicability of a State Co-operative Societies Act over more than one state as a State Act cannot have extra-territorial operation and the multi-state co-operative societies cannot be regulated by a State Co-operative Societies Act.

32. In deciding the case of Naresh Shanker Srivastava, the Hon"ble Supreme Court observed that "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."

33. The Hon"ble Supreme Court further observed that "the only relevant consideration for continuance of a multi-State cooperative society as a multi-State cooperative 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 reorganisation 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.

34. In the case on hand after reorganisation and carving out a new State i.e. State of Uttaranchal, the Central Government by means of Notification dated 15th of January, 2001 created a new Uttaranchal Postal Circle for the State of Uttaranchal. The Notification also provided that headquarters of new Uttaranchal postal Circle will be Dehradun and Headquarter of U.P. Postal Circle will continue to be the same i.e. Lucknow. On 10th of November, 2004 the Division Bench of this Court held that the petitioner's Society is not governed under the Multi State Cooperative Society Act, 1984. In appeal the Hon"ble Supreme Court on 5th of January, 2005 refused to stay the order of the High Court. Thereafter on 4th of August, 2006 the Society amended its bye-laws with regard to its area of operation and in its General Body meeting dated 13th of February, 2006 it restricted its area of operation within the territory of U.P. Postal Circle. On 22nd of June, 2009 the Reserve Bank of India also permitted the petitioner to shift its branches situated at Dehradun and Nainital in State of Uttaranchal to Gautam Budh Nagar and Mohoba in the State of Uttar Pradesh.

35. The aforesaid facts indicate that after reorganisation of State it restricted its

operation within the territory of State of U.P. and it lost its character as a Mutli State Cooperative Society, on the date of Notification issued on 15th of January, 2001 by the Central Government forming a new Uttaranchal Postal Circle for the State of Uttaranchal.

36. The Hon''ble Supreme Court considering the provisions of Section 95 of the Mutli State Cooperative Societies Act, 1984 held that after reorganisation of State under the deeming clause it became registered as a Multi State Cooperative Society without discussing the factual aspect of the case, rather opened to agitate the factual issue.

37. Now the question remains for consideration what would be the effect of the judgment of the Hon''ble Supreme Court on the order passed by the Deputy Registrar of the Cooperative Societies under the State Act ? After considering the various aspects of the case I find that even after becoming the petitioner''s Society a Multi State Cooperative Society under the deeming clause of Section 95 of the Act, 1984, the Division Bench of this Court on 10th of November, 2004 declared that by virtue of the said clause, the petitioner''s Society had not become the Multi State Cooperative Society. The Hon''ble Supreme Court refused to stay the said order by means of order dated 8th of January, 2005. Thereafter the Deputy Registrar of the Cooperative Societies passed the order of surcharge on 7th of September, 2005. Though the petitioner''s Society on the legal premise has been declared a Multi State Cooperative Society under the deeming clause of Section 95 of the Multi State Cooperative Societies Act, 1984, but the action of the Deputy Registrar is well protected under the order of the Division Bench of this Court as well as under the de facto doctrine as has been discussed in the case of Gokaraju Rangaraju (Supra) and in the case of Dr. AR. Sipcar (Supra). The proposition of law laid down by the Hon''ble Supreme Court for retrospective operation of the judgments of the courts is not disputed, but the order passed by the authority after the judgment of the Division Bench of this Court is well protected under the law laid down by the Hon''ble Supreme Court in the case of Gokaraju Rangaraju (Supra). Further the dispute after passing the order by the Central Registrar is still sub-judice before the Division Bench of this Court to determine whether the society is governed under the said Act or Multi State Act, but so far as the order passed by the Deputy Registrar, which was impugned before the Cooperative Tribunal and has been declared by the Cooperative Tribunal as without jurisdiction is concerned, I am of the view, that is well saved under the de facto doctrine.

38. Being that so, I hereby quash the order impugned dated 3rd of February, 2010, passed by the Cooperative Tribunal in Appeal No. 192 of 2005 and remit the matter to the Tribunal to adjudicate upon it on merit after providing opportunity of hearing to the parties concerned.

39. In the result both the writ petitions are allowed.