

SUPREME COURT OF INDIA

Naresh Shanker Srivastava

Vs.

State of U.P.

C.A.Nos.292-294 of 2005

(S.B. Sinha J.)

06.05.2009

JUDGEMENT

DR. MUKUNDAKAM SHARMA, J.

1. The present appeals arise out of judgment and order dated 10.11.2004 passed by the High Court of Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 5171 of 2002 along with 13 other similar connected writ petitions. Since the common questions are involved in these appeals, the same are being disposed of together with a common judgment.

2. The important legal issues which have arisen for consideration in these appeals are whether after the bifurcation/re-organisation of the State of Uttar Pradesh and creation of the State of Uttaranchal under the U.P. State Re-organization Act, 2000 (hereinafter referred to as the 'Re-organisation Act') which was promulgated on 9.11.2000, the affairs of various cooperative societies carrying out their business in both the States at the time of re-organisation shall be governed by the U.P. State Cooperative Societies Act, 1965 (hereinafter referred to as the 'UP Act') or by the Multi State Cooperative Societies Act, 1984 (hereinafter referred to as the 'Multi-State Act') and whether these

societies would automatically become Multi State Cooperative Societies with effect from 09.11.2000 i.e. the date of re-organisation of the State. This issue has emanated because of an order dated 14.02.2001 passed by the Registrar of Cooperative Societies to the effect that the U.P. Cooperative Processing and Cold Storages Federation Limited, Lucknow (in short the 'PACSFED') is deemed to be a Multi State Cooperative Society under Section 7 of the Multi-State Act. The said order was the subject matter of the writ petitions out of which the present appeals arise.

3. Brief facts of the case for the purpose of disposal of present bunch of appeals are required to be stated first. The PACSFED was registered on 25.11.1974 as apex cooperative society under the provisions of the UP Act and the Rules framed thereunder. The area of operation of the PACSFED was the whole state of Uttar Pradesh. In the year 2000, the Re-organisation Act was passed which came into force on 09.11.2000.

By the operation of the said Act, the State of Uttar Pradesh was bifurcated and a new State of Uttaranchal (now Uttarakhand) was created by carving out certain territories from the State of Uttar Pradesh.

4. Due to the aforesaid re-organisation, the PACSFED is taken to have become automatically a multi-state co-operative society on 09.11.2000 i.e. the date of re-organisation by virtue of operation of Section 95 of the Multi-State Act. On 14.02.2001, the Central Registrar of the Multi State Co-operative Societies issued a Registration Certificate granting registration of the PACSFED under the Multi-State Act. Aggrieved by this decision, the Registrar of Co-operative Societies, Lucknow filed a revision on 18.04.2001 before the Central Government under Section 92 of the Multi-State Act challenging the issuance of aforesaid Registration Certificate. However, on 06.02.2002 the said revision was dismissed by the Central Government.

5. The State of Uttar Pradesh and the Registrar, Co-operative Societies, Uttar Pradesh on 22.05.2002 filed two Writ Petitions bearing nos. 602 and 1710 of 2002 in the High Court of Allahabad challenging the aforesaid order dated 06.02.2002 of the Central Government. The High Court by impugned judgment and order dated 10.11.2004 allowed the said writ petition and quashed the Certificate of Registration dated 14.02.2001 and also the order of the Central Government dated 06.02.2002.

6. Feeling aggrieved by the aforesaid decision of the High Court, the present special leave petitions have been preferred. There were in total six appeals against the said decision of the High Court. This Court vide its order dated 17.01.2008 dismissed the appeal bearing C.A. No.

291/2005 as withdrawn. Another appeal bearing C.A. No. 290/2005 was dismissed for non-prosecution by this Court vide order dated 05.02.2009.

Therefore, only four appeals bearing Civil Appeal Nos. 292/293/294 of 2005 and 1722 of 2005 are before us for final disposal.

7. Learned counsel for the appellant submitted that on account of the bifurcation of the State of Uttar Pradesh into two States i.e. State of Uttar Pradesh and the State of Uttaranchal, the area of operation of the PACSFED extended to both the States on and from the date when the State of Uttaranchal came into existence i. e. from 09.11.2000 and thus the objects of PACSFED did not remain confined to one State and it extended to both the States. By reason of extension of the area of operation, the objects of PACSFED also automatically extended to the aforesaid two States, as a consequence whereof the PACSFED automatically become a deemed multi-state cooperative society, registered under the Multi-State Act. It is also submitted by him that the High Court recorded an illegal finding that the PACSFED as apex cooperative societies operating in the State of U.P., shall continue to operate in two States and these societies should have been governed by the U P State Act, unless and until a joint decision was taken by the two States and the byelaws of these societies were amended accordingly, and, since the byelaws of the societies were not amended and proper resolutions were not passed, it cannot be said that the Multi-State Act would have started to occupy the field.

8. Another contention placed before us by the appellant was that the High Court erred in not considering the effect of Section 95 of the Multi-State Act which takes complete care of the situation arising out of reorganization of States on certain class of cooperative societies. He submitted that Section 67 of the Re-organisation Act does not at all apply in the present case as Section 95 of the Multi-State Act already exists in the form of a central law which is sufficient to take care of cooperative societies which would become Multi-State Cooperative societies from the day of reorganisation of State. He further submitted that the cooperative societies are not created under any Central Act or State Act but they are created by the members in accordance with the provisions of the Central or State Cooperative Societies Acts, therefore, Section 67 of the Re-organisation Act shall have no application. He next submitted that Section 86 of the Reorganisation Act did not apply in the present case as Section 86 extends the application of State laws of U.P. to the territories of newly carved out State of Uttaranchal for a transitory period till the State of Uttaranchal makes its own local laws and under Section 87 the appropriate Government may make such laws within a period of two years.

9. Learned counsel for the respondents contended that the Multi-State Act is not applicable in the present case as the affairs of societies formed before the Reorganisation of the Uttar Pradesh were still to be governed by the U.P. State Act. It is the case of respondents that the PACSFED including the constitution of its Committee of Management was to be governed by the relevant provisions contained in U.P. Act and the Rules and Regulations of 1968 made thereunder. He submitted that the High Court rightly held that the specific provision would exclude the general provision by observing that all the provisions of the Multi-State Act shall stand ousted because of the non-obstante clause contained in Section 93 of the Re-organisation Act and the provisions of Section 93 of the Re-organisation Act have an overriding effect on any law containing inconsistent provisions. He argued that Section 67 of the Re-organisation Act has taken care of exigencies, events pursuant to carving out of the new States from the parent State of Uttar Pradesh. He submitted that the bye-laws of PACSFED clearly mentioned that its area of operation "shall be whole Uttar Pradesh". No particular district or area has been mentioned, and that under the objective and bye-laws, PACSFED can

operate only in the area of State of Uttar Pradesh, whatever it may be for the time being. Before the constitution of the State of Uttaranchal (now Uttarakhand) by the Re-organisation Act, the area falling under Uttarakhand was within the State of Uttar Pradesh and on re-constitution some area was taken away and the area of Uttar Pradesh stood reduced.

He stated that according to the bye-laws, the area in operation of PACSFED would immediately and automatically get confined to the new territory of Uttar Pradesh and it would not permit any operation in the territory of Uttarakhand.

10. After referring to various provisions of the Re-organisation Act, the learned counsel for the respondents pointed out that the laws which were in force at the time of re-organisation would continue to operate and Part II of the Act shall not be deemed to have affected any change in the territories to which existing laws of Uttar Pradesh were applicable until otherwise provided by a competent legislature. He further pointed out that so far as the U P State Act was concerned, the territorial change in Part II of the Re-organization Act would become effective only on and from 21.5.2003. Before this date, Part II of the Act was not having any impact on the U P State Act and PACSFED could not become Multi State Cooperative Society. After 21.5.2003, 14 member societies of PACSFED in Uttaranchal would automatically become registered under the Uttaranchal Cooperative Societies Act, 2003 (hereinafter referred to as 'Uttaranchal Act') by virtue of Section 129 of the Uttaranchal Act.

Hence, even after 21.5.2003, the PACSFED did not become a Multi State Cooperative Society. He submitted that neither the validity of the Uttaranchal Act nor the fact of deemed registration of these 14 societies under the Uttaranchal Act has been challenged.

11. After referring to Section 67 of UP State Act, learned counsel further submitted that where a body corporate constituted under a State Act becomes an inter State body corporate then the said body corporate shall continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to directions of Central Government and until other provision is made by law. In the instant case, after the Re-organisation Act has been passed no further directions and law were made by State of Uttaranchal, therefore, the Multi-State Act would have no application to PACSFED.

12. In view of the aforesaid submissions advanced by the respective parties, it would be desirable to deal with and refer to the various provisions of different statutes relevant and applicable to the matter at hand.

13. Section 7 of Multi-State Act which provides for the registration of any Multi State Co-operative

Society reads as follows:

"7. Registration - (1) If the Central Registrar is satisfied - (a) that the application complies with the provisions of this Act and the rules;

(b) that the proposed multi-State cooperative society satisfies the basic criterion that its objects are to serve the interests of members in more than one State;

(c) that there is no other multi-State cooperative society having similar area of operation and identical objects;

(d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and (e) that the proposed multi-State cooperative society has reasonable prospects of becoming a viable unit, he may register the multi-State cooperative society and its bye-laws.

(2) Where the Central Registrar refuses to register a multi-State cooperative society, he shall communicate the order of refusal together with the reasons therefore, to such number of the applicants and in such manner as may be prescribed.

(3) The application for registration shall be disposed of by the Central Registrar within a period of six months from the date of receipt thereof by him:

Provided that if the Central Registrar is unable to dispose of the application within the period aforesaid, he shall make a report to the Central Government stating therein the reasons for his inability to do so, and the Central Government may allow him such further period or periods as is considered necessary to dispose of such application."

Section 18 Multi-State Act provides for conversion of co-operative society into Multi-State Cooperative Society which is quoted below:

"18. Conversion of cooperative society into multi-State Cooperative Society- (1) A cooperative society may, by an amendment of its bye- laws, extend its jurisdiction and convert itself into a multi-State cooperative society:

Provided that no such amendment of bye-laws of a cooperative society shall be valid unless it has been registered by the Central Registrar.

(2) (a) Every proposal for such amendment shall be forwarded to the Central Registrar.

(b) If the Central Registrar, after consulting the Registrars of Cooperative Societies of the States concerned, has satisfied himself that such amendment fulfils the requirement of sub-section (2) of section 9, he may register the amendment within a period of six months from the date of receipt thereof by him:

Provided that if the Central Registrar is unable to register the amendment within the period aforesaid, he shall make a report to the Central Government stating therein the reasons for his inability to do so, and the Central Government may allow him such further period or periods as is considered necessary to register the amendment.

(3) The Central Registrar shall forward to the cooperative society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been registered.

(4) Where the Central Registrar refuses to register an amendment of the bye-laws of a cooperative society, he shall communicate the order of refusal together with the reasons therefore to the society in the manner prescribed within seven days from the date of refusal.

(5) (a) Once the amendment of bye-laws has been registered by the Central Registrar, the cooperative society shall, as from the date of registration of amendment, become a multi-State cooperative society.

(b) The Central Registrar shall forward to the cooperative society a certificate signed by him to the effect that such society has been registered as a multi- State cooperative society under this Act and also forward a copy of the same to the Registrar of Cooperative Societies of the State concerned.

(c) The Registrar of Cooperative Societies referred to in clause (b) shall thereupon make an order directing that the society had, as from the date of registration by the Central Registrar, ceased to be a

society under the law relating to co-operative societies in force in that State."

Section 95 of the Multi-State Act contemplates about the future status of the societies functioning immediately before the re-organisation of states:

"95. Cooperative societies functioning immediately before re-organisation of States - (1) Where by virtue of the provisions of Part I of the [States Reorganisation Act, 1956](#), or any other enactment relating to reorganisation of States, any cooperative 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 cooperative society, it shall be deemed to be a multi-State cooperative 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.

(2) If it appears to the Central Registrar or any officer authorised in this behalf by the Central Government (hereafter in this section referred to as the authorised officer) that it is necessary or expedient to reconstitute or reorganize any society referred to in sub-section(1) the Central Registrar or the authorised 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 reorganisation, 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 cooperative 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 cooperative 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 authorised 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 authorised 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 cooperative society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by that multi-State cooperative society by a resolution passed by a majority of the members present at a meeting of its general body."

(emphasis added)

14. Sections 67 of the Re-organisation Act deals with the continuance of existing body corporate when it provides :

"67. General provision as to statutory Corporations.- (1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Uttar Pradesh or any part thereof has, by virtue of the provisions of Part II, become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate.

(2) Any directions issued by the Central Government under sub-section (1) in respect of any such body corporate shall include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect subject to such exceptions and modifications as may be specified in the direction."

(emphasis added) Section 86 of the Re-organisation Act provides for the territorial extent of laws:

"86. Territorial extent of laws.-The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling of Land Holding Act, 1961 and any other law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by

a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day.

Section 93 of the Re-organisation Act is the non-obstante clause:

93. Effect of provisions of the Act inconsistent with other laws.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

15. A perusal of the above-mentioned provisions makes it crystal clear that Section 95 of the Multi-State Act will be squarely applicable to the case in hand. This provision addresses a situation like the present one. It provides that where the object of the cooperative society is confined to one State would become from the date of reorganization of State, a Multi State Cooperative Society by virtue of Part II of State Reorganisation Act and then it shall be deemed to be Multi State Cooperative Society and the bye-laws of such Society shall continue to be in force until altered.

16. It is to be kept in mind that Section 95 of the Multi-State Act has been incorporated to meet a particular situation. The said Section provides that it would be operative as a consequence of reorganisation of States and particularly when any area or portion of area of the Society is bifurcated or divided and then fell in the jurisdiction of two State administrations.

The idea is to obviate the administrative stalemate arising out of creation of a new State and new administration. This section is independent of all other sections of the Act. The Multi-purpose Co-operative Society has been defined as a Society registered or deemed to be registered under the Act and includes a National Co-operative Society. Sections 2, 4, 5, 6, 7 and 8 deal with how a Multi-State Co-operative Society could be registered under the Central Act. In other words, by voluntary acts of the concerned persons a Multi-State Co-operative Society could be formed if it satisfies the conditions laid down in the aforesaid sections. As the definition of Multi-State Co-operative Societies indicates, there are two situations envisaged as to how a Multi-State Cooperative Society comes into being. One is registered after observing formalities of Sections 4, 5, 6, 7 and 8 and the other is deemed Multi-State Co-operative Societies as envisaged under section 95 of the Central Act.

17. As noted earlier, Section 95 of the Multi-State Act takes care of a situation arising out of re-organisation 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.

18. The learned counsel for the respondents vehemently argued that in view of Section 67 of the Re-organisation Act, Section 95 of the Multi-State Act has no application. However, we do not find any merit in such contention as Section 67 of the Re-organisation Act does not at all apply to the facts of the present case. Section 95 of the Multi-State Act already exists in the form of a central law which takes care of and makes provisions for such co-operative societies which as and from the day of the re-organisation of a particular State become Multi State Co-operative societies.

19. The word used in Section 67 of the Re-organisation Act is "subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate" which is of vital significance. It gives an unmistakable impression that the need for a direction of the Central Government would arise only in respect of the applicability of a State law to the body corporate which by virtue of the re-organisation of State become inter- state body corporate. This is quite evident from a reading of sub-section (2) of Section 67 of the Re-organisation Act. But when a central Act (in the present case the Multi-State Act) already contains a provision in the form of Section 95 which clearly embraces such co-operative societies within its fold which as and from the date of re-organisation of the State become multi-state cooperative societies, there is no legal requirement of issuing any direction by the Central Government for making the Multi- State Act applicable.

20. So far as the contention regarding the applicability of Section 86 of the Re-organisation Act is concerned, it would not be applicable in the present case as Section 86 of the Re-organisation Act cannot affect the Multi-State Act which is a central legislation. There is no denying of the fact that a central law viz. Section 95 of the Multi-State Act already exists in the statute book to govern and regulate the functioning of the cooperative societies which as and from the date of reorganisation of the State of U.P. become multi-State cooperative societies. Similarly, Section 93 of the Reorganisation Act would also have non-application in the present case since the aforesaid provision cannot override Section 95 of the Multi State Act, which is a central Act.

21. In the case of *Anand Mal v. State of Rajasthan*, AIR 1962 Raj. 218, 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 *Mapusa Urban Cooperative Bank Ltd. v. G.S. Patil*, MANU/MH/0342/1998, 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 cooperative society into a multi-State cooperative 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 cooperative 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 cooperative society is followed, the cooperative society would continue to be a State cooperative 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 Re-organisation 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 Cooperative 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 cooperative society cannot automatically revert to assume the character of a State cooperative society. Further, there is no provision in the Multi- State Act which permits such automatic conversion of a multi-State cooperative society into a State cooperative society by operation of law.

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 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.

25. In view of the foregoing discussions the PACSFED is a deemed multi State cooperative society registered under the corresponding provision of the Multi-State Act, 1984 as and from the date of the reorganisation of the State of Uttar Pradesh and, therefore, the impugned judgment and order dated 10.11.2004 is liable to be set aside, which we hereby do.

26. Appeals are accordingly allowed.