

Court No. 3

Case :- WRIT - C No. - 6744 of 2019

Petitioner :- The Mechanical Department Primary And Another

Respondent :- Union Of India And Another

Counsel for Petitioner :- Satyawan Shahi, Shashi Ranjan

Srivastava, Sri Shashi Nandan (Senior Advocate)

Counsel for Respondent :- A.S.G.I., Adya Prasad Tewari, Gaurav

**Gautam, Ramesh Chandra Pandey, Sanjeev Kumar, Sheo Shankar
Tripathi**

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

(Per: Hon'ble Jayant Banerji, J.)

1. The array of parties in this petition is as follows:-

“1. The Mechanical Department Primary Co-operative Bank Limited, North Eastern Railway, Gorakhpur through its Secretary Mr. Balwant Kumar Shahi.

2. Mr. Balwant Kumar Shahi son of Late Prasiddh Narain Shahi Secretary, The Mechanical Department Primary Co-operative Bank Ltd., North Eastern Railway, Gorakhpur.

.....PETITIONERS

VERSUS

1. Union of India through Secretary, Ministry of Agriculture & Co-operative, Government of India, New Delhi.

2. Central Registrar, Co-operative New Delhi/Joint Secretary, Government of India Krishi Bhawan New Delhi.

3. Reserve Bank of India through its Manager, 8-9 Vipin Khand, Gomti Nagar, Lucknow.

.....RESPONDENTS.”

2. This writ petition has been filed seeking the following reliefs:-

“1. Issue a writ, order or direction in the nature of certiorari quashing impugned order dated 26.12.2018 passed by Central Registrar, Co-operative New Delhi/Joint Secretary Government of India Krishi Bhawan, New Delhi/respondent no.2 (Annexure no.20 to the writ petition).

II. Issue a writ, order or direction in the nature of mandamus commanding Central Registrar, Co-operative New Delhi/Joint Secretary, Government of India, Krishi Bhawan, New Delhi/respondent no.2 to treat the petitioners' bank registration in Multi State Co-operative Societies Act, 2002."

3. The petitioner No. 1¹ is stated to have been registered under the Cooperative Societies Act, 1912² on 31.5.1919 bearing registration No. 275 and at that point of time, the petitioner-bank was named "The Mechanical Department Credit Society Ltd. Gorakhpur". It is stated that time to time, necessary amendments were made in the years 1962-1966. Again amendment was done on 3.5.1973 by the Central Registrar Co-operative Societies, U.P. Lucknow, whereby the name of the petitioner-bank became Mechanical Department Primary Co-operative Bank Ltd. In 1982, the Reserve Bank of India granted licence to the petitioner-bank under Section 23 read with Section 56(p) of the Banking Regulation Act, 1949³ to open an office at Izzat Nagar, District Bareilly apart from Gorakhpur for working and functioning of the petitioner-bank.

4. The petitioner-bank has sought to demonstrate its being subjected to regulatory control under the Multi-State Cooperative Societies Act, 1984⁴ by the respondent no.2 by stating that a letter dated 14.3.1997 was sent by the Registrar of the Cooperative Societies, U.P. Lucknow to the Joint Secretary/Central Registrar on the subject of prior approval of supersession of governing body of the petitioner-bank under Section 48 of the Act, 1984; a reminder letter dated 31.3.1997 was again issued. Thereafter, the respondent no.2, Central Registrar issued a letter dated 2.4.1997 to the Registrar Cooperative Societies, U.P. conveying his approval to initiate action against the Board of Directors of the petitioner-bank under Section

1 petitioner-bank

2 Act, 1912

3 B.R. Act

4 Act, 1984

48 of the Act, 1984. By an order dated 10.4.1997, the respondent no.2, Central Registrar superseded the petitioner-bank and appointed a Board of Administrators comprising of three administrators to administer the affairs of the petitioner-bank. The petitioner-bank then filed a writ petition No. 43087 of 1998 which was disposed of by a judgment and order dated 18.1.1999.

5. It is stated that it was held by this Court in the aforesaid writ petition of 1998 that the Board of Administrators was legally put in office; it was directed, inter alia, that the existing Board of Administrators, which would be functioning only till such time the newly elected Board of Directors was constituted by the close of the month of February 1999, shall merely manage day to day affairs of the petitioner-bank and shall not take any policy decision and shall also not make any fresh appointments; the Chief Mechanical Engineer, North Eastern Railway, Gorakhpur as well as the Central Registrar were directed to ensure that the elections to constitute new Board of Directors take place and existing Board of Administrators is relieved of its responsibilities positively by the end of February, 1999.

6. The Additional Commissioner/Additional Registrar, Cooperative, U.P. Lucknow wrote a letter dated 9.5.2017 to the Secretary of the petitioner-bank in respect of an order dated 13.4.2017 passed by this Court in Contempt Application(Civil) No. 1573 of 2017 to state that in respect of Writ Petition No. 60894 of 2016 filed by the petitioner-bank, consequent to the direction passed in that writ petition, the Joint Commissioner and Joint Registrar, Gorakhpur Division had submitted a report by means of a letter dated 30.01.2017 stating that in his office in the registration register, the Mechanical Department Cooperative Credit Society Ltd, Gorakhpur was registered on 31.5.1919 at sl. no. 275; that the

registration No. 275 pertaining to the petitioner-bank the Mechanical Department Primary Cooperative Bank Ltd., North Eastern Railway, Gorakhpur was not registered on 3.5.1973; that by a letter dated 31.1.2017, pursuant to the order of the High Court, the matter was disposed of earlier by the Commissioner/ Registrar; that the petitioner-bank was intimated about the developments by another letter dated 27.4.2017, a copy of which was enclosed alongwith that letter.

7. It is stated that on one hand in its own order of 14.3.1997, the Registrar, Cooperative Societies states that the Mechanical Department Primary Cooperative Bank Ltd. (petitioner no.1) must be dissolved, while on the other hand the letter dated 9.5.2017 was issued stating that the petitioner-bank does not appear to be registered at sl. no. 275 on 3.5.1973.

8. An order dated 9.8.2017 was passed by the Lucknow branch of the Reserve Bank of India, whereby within fifteen days the payment counter running at Samastipur, Bihar was directed to be stopped and membership granted by the petitioner-bank in other States was directed to be cancelled. This order was challenged before this Court by the petitioner-bank by way of Writ-C No. 38808 of 2017 which came to be disposed of by an order dated 21.3.2018 on the terms agreed by the counsel for the parties in which the petitioner-bank's application under the provisions of Multi-State Cooperative Societies Act, 2002⁵ was directed to be considered afresh on the basis of original registration in 1919 under the provisions of the Act, 1912. The petitioners were directed to produce an extract of the register showing their registration as a Credit society. The Reserve Bank of India was also directed to consider the petitioner's request for grant of licence after registration under the

⁵ Act, 2002

provisions of the Act, 2002 expeditiously. The order dated 21.3.2018 of this Court is quoted below:-

“Heard Mr. Shashi Nandan, learned Senior Advocate with Mr. Satyawan Shahi, learned counsel for the petitioners, Mr. Ramanand Pandey, learned Addl. Chief Standing Counsel for respondents-State, Mr. Vikas Budhwar, learned counsel for respondent no.4, Mr. Gyan Prakash, learned counsel for respondent no.2 and Mr. A.P. Tiwari, learned counsel for the intervener.

The writ petition is directed against the order dated 9.8.2017 issued by respondent no.4-Reserve Bank of India. The relevant portion of the order, impugned in the present writ petition, reads thus:

"4-केन्द्रीय टैफकब की 16 वीं बैठक दिनांक 09 जून, 2017 की अनुशंसा के अनुसार आपके बैंक को uni-state बैंक में convert किया जाना है। अतः आपको यह निर्देश दिया जाता है कि इस पत्र की प्राप्ति से 15 दिनों के भीतर Samastipur, Bihar में चल रहे अपने पेमेंट काउंटर को बंद करना सुनिश्चित करें तथा अन्य राज्यों में विभिन्न लोगो को प्रदान की गई सदस्यता को निरस्त करें।

5. इसके अतिरिक्त उपरोक्त के संबंध में आपसे अपेक्षित है कि बैंक अपने bye-laws का amendment करवाए तथा RCS, Lucknow से अनमोदन के पश्चात उसकी एक प्रति भारतीय रिजर्व बैंक, लखनऊ को यथाशीघ्र प्रदान करें।"

The letter of the Reserve Bank of India also takes a note that the petitioners Society is not registered with the Central Registrar of Co-operative Societies under the provisions of the Multi-State Cooperative Societies Act, 2002 (for short 'Act, 2002'). In view thereof, the petitioners have also prayed for a direction to the Central Registrar (respondent no.2) to continue to keep their Society as Multi-State Cooperative Society and issue necessary registration certificate under the provisions of the Act, 2002.

In this backdrop, we have heard learned counsel for the parties and with their assistance gone through the entire materials placed before us.

It is not in dispute that the petitioners were initially registered as Credit Society under the provisions of the U.P. Cooperative Societies Act, 1912. We have also perused the Register produced by Mr. Ramanand Pandey, learned Addl. Chief Standing Counsel for the State, which supports the petitioners' case that they were registered in 1919 as "Mechanical Department Credit Society Ltd." The entry in the Register at Serial No. 275 also shows that in 1962, revised bye-laws of the Society were registered and some amendment was also registered on 3.2.1966. It is not clear from the entry in the Register as to what amendment was registered in 1966.

According to the petitioners, in 1973, the name of their Society was changed as "The Mechanical Department Primary Co-operative Bank Ltd." and the certificate to that effect was issued by the Central Registrar, Co-operative Societies, U.P. Lucknow on 3.5.1973. Unfortunately, the original registration certificate dated 3.5.1973 is, according to the petitioners, misplaced. In other words, they are not in a position to produce original registration certificate dated 3.5.1973 as a Co-operative Bank. Mr. Pandey, learned Addl. Chief Standing Counsel, submits that even in their record, such a certificate is not available.

Be that as it may, the petitioners since May, 1973 are functioning as a Co-operative Bank and they claim that the employees of the North Eastern Railway, not only in the State of U.P. but in the States of Uttarakhand and Bihar, are also members. Their total membership is 18,933, who are employees of the North Eastern Railway and East Central Railway. According to the petitioners, 577 employees of the Railways are not residents of the State of Uttar Pradesh. For their convenience, according to the petitioners, they opened a pay counter/recovery counter at Samastipur, which falls in the State of Bihar. The petitioners Bank has total deposits of Rs.56,73,49,000/-. The petitioners Bank is run and managed by an elected Board of Directors and they cater the need of only their members, who are also employees of the Railways. We may also make a reference to the license issued by the Reserve Bank of India dated 12.5.2010 and the license dated 5.3.1982 (Annexure-2 collectively), which show that the Reserve Bank of India in exercise of the powers conferred by Section 23 read with Section 56 (p) of the Banking Regulation Act, 1949, authorized the petitioners Bank to open an office at Izzat Nagar, District Bareilly subject to conditions mentioned in the office letter dated 5.3.1982. It further appears from the license dated 12.5.2010 that the petitioners Cooperative Society was granted license under Section 22 (1) read with Section 56 (a) of the Banking Regulation Act, 1949.

We may also observe that the parties have agreed for this order in view of the fact that the petitioners Co-operative Society was initially registered in 1919 as Credit Society and thereafter since 1973, they have been functioning as a Bank without interruption and for its employees, who are all employees of the Railways and there is no allegations of whatsoever nature about functioning of the Bank. We may also notice that the Central Registrar under the provisions of the Act, 2002 refused the petitioners' registration only on the ground that they could not and did not produce the registration certificate dated 3.5.1973 of the Mechanical Department Primary Co-operative Bank Ltd.

The intervener has not disputed that the petitioners Society was registered under the provisions of the U.P. Cooperative Societies Act, 1912 and initially they were registered as Credit Society, and since May 1973, they have been working as a Co-operative Bank.

In this backdrop, counsel for the parties have agreed for the order that we propose to pass. We, therefore, dispose of this petition by the following order:

The Central Registrar, Cooperative Societies, under the provisions of the Act, 2002, shall proceed to consider the petitioners' application afresh on the basis of original registration in 1919 under the provisions of the U.P. Cooperative Societies Act, 1912 and pass appropriate orders within a period of four weeks from the date of receipt of this order. The petitioners are directed to produce an extract of the Register, showing their registration under the provisions the U.P. Cooperative Societies Act, 1912 as the Credit Society. It is needless to mention that the respondent no.2-Central Registrar shall not insist for original registration certificate dated 3.5.1973 bearing No.275. After the registration under the provisions of the Act, 2002, it is open to the petitioners to approach the Reserve Bank of India for obtaining their permission to open new place of business in and outside the State of Uttar Pradesh. Till the license as contemplated under Section 23 read with Section 56 of the Banking Regulation Act, 1949 is issued by the Reserve Bank of India, the petitioners shall not operate/run their counter in and outside the State of Uttar Pradesh except at its head office at Gorakhpur and at its Branch at Izzat Nagar in district Bareilly, as mentioned in the registration certificate. We direct the respondent no.2-Central Registrar to consider the petitioners' application within the stipulated time. We also observe that the Reserve Bank of India shall also consider the petitioners' request for issuance of license after their registration under the provisions of the Act, 2002 expeditiously. We direct the petitioners to produce a copy of this order along with all necessary documents before respondent no.2-Central Registrar within one weeks from today.

The petition is, accordingly, disposed of.

9. By an order dated 20.4.2018, the respondent no.2 rejected the application of the petitioner-bank for registration under the Act, 2002.

10. Challenging the order dated 20.4.2018 passed by the respondent no.2, the petitioners filed a writ petition bearing Writ-C No. 16029 of 2018 which was disposed of by an order dated 12.10.2018 after setting aside the order dated 20.4.2018. The order passed by this Court is quoted below :-

“Heard Mr. Shashi Nandan, learned Senior Advocate, with Mr. Satyawan Shahi and Mr. Shashi Ranjan Srivastava, Advocates, for the petitioners and Mr. Ajay Singh, learned counsel for the respondent - Union of India.

This writ petition impugns the order dated 20.04.2018 passed by the second respondent, rejecting the petitioners' application/claim for registration of their Society under the provisions of the Multi-State Cooperative Societies Act, 2002 (for short 'Act, 2002'). This

order has been passed in pursuance of the order passed by this Court dated 21 March 2018 in Writ-C No. 38808 of 2017. By this order, the petitioners were allowed to make an application afresh, on the basis of the original registration in 1919 under the provisions of the U.P. Cooperative Societies Act, 1912 for their registration under the provisions of the Act, 2002. The Central Registrar, Cooperative Societies, rejected the petitioners' application, observing that the petitioners do not have members in more than one State, as contemplated by Section 5 of the said Act. He also observed that the petitioner Society did not produce any materials in support of their case. Learned Senior Counsel for the petitioners, submits that the petitioners were not heard by the Central Registrar, Cooperative Societies before passing the impugned order. This submission has not been disputed by counsel for the respondents. That being so and considering the observations made in the impugned order, in particular paragraphs 3 and 4 thereof, we propose to dispose of this writ petition by order which, counsel appearing for both sides, have consented for. Hence, we dispose of this writ petition by the following order:

The order dated 28.04.2018, impugned in the present writ petition, is set aside. The matter is remanded to the Central Registrar, Cooperative Societies, to decide afresh. Petitioners are allowed to produce a list of their members with their addresses in support of the case that they have members in more than one State and that "area of operation" is outside State also, from where persons are admitted as their members. The Central Registrar shall consider the petitioners' case in the light of materials produced by them and after granting them an opportunity of being heard, on merits in accordance with law, within a period of two months from the date of receipt of this order. Petitioners are directed to produce a copy of this order alongwith a copy of the writ petition and annexures before the Central Registrar, within a period of two weeks from today.

With these observations, the petition is disposed of.”

11. The petitioners submitted a detailed representation to the respondent no.2 on 22.10.2018 alongwith a list of members of the petitioner-bank in the State of Uttar Pradesh, Bihar and Uttarakhand. Thereafter by means of the impugned order dated 26.12.2018, the respondent no.2 has once again rejected the claim of petitioners.

12. It is contended by the learned counsel for the petitioners that the impugned order dated 26.12.2018 has been passed by the respondent no.2 in utter disregard of the judgment dated 12.10.2018, passed by this Court in Writ-C No. 16029 of 2018; that the judgment dated 21.3.2018 passed in Writ-C No. 38808 of 2017 has attained

finality and the respondent no.2 is bound to proceed strictly in accordance with the detailed directions given in the judgment dated 21.3.2018; that the petitioner-bank is working under the Act, 2002; that the only question for adjudication before the respondent no.2 was whether the petitioner-bank is functioning in one State or not, which issue was not considered at all by it. Under the circumstances, it is prayed that the impugned order dated 26.12.2018 passed by the Central Registrar Cooperative, New Delhi be set aside.

13. Primarily, the questions that would arise for considerations are:-

- (1) Whether the objects of the petitioner-bank were not confined to one State, and if so, since when?
- (2) Whether the petitioner-bank has demonstrated its registration under the Act, 2002?
- (3) Whether the circular of the Reserve Bank of India can legally mandate prior permission of Reserve Bank of India by the petitioner-bank for seeking revision of its by-laws by amendment?

Consideration of Question Nos. 1 & 2

14. It appears from the record of this petition that respondent no.2, by its order dated 24.7.2007 (Annexure No. 9 to the writ petition), appointed a returning officer to conduct the elections of the Board of Directors of the petitioner Co-operative Bank in exercise of power conferred upon him under Rule 19 of the Multi-State Cooperative Societies Rules, 2002⁶. In the order, the respondent no.2 had observed that the returning officer may decide the question of disqualification, inter-alia, under Section 43(2)(a) read with Section 45 of the Act, 2002. This is not denied in the counter affidavit.

⁶ MSCS Rules, 2002

15. Annexure-10 to the writ petition is a letter dated 29.8.2007 issued by the respondent no.2 to the District Magistrate, Samastipur Bihar. In this letter, it has been stated that the petitioner-bank is registered under Act, 2002 and Rules, 2002. It was mentioned that the members of the petitioner-bank are Railway employees of North Eastern Railway and the branches of the bank are spread in Izatnagar (Bareilly), Lucknow, Gonda, Varanasi, Gorakhpur, Samastipur, Sonpur etc. The District Magistrate was requested to provide accommodation to the Returning Officer in the Government Guest House/Circuit House, Samastipur.

16. There is another letter of the Director (Cooperative), Department of Agriculture and Cooperative, Ministry of Agriculture, Government of India dated 2.4.1997 (Annexure no. 14 to the writ petition) addressed to the Registrar Co-operative Societies, U.P. Lucknow conveying the approval of the Central Registrar to initiate action against the Board of Director of the petitioner-bank under Section 48 of the Act, 1984 apparently in exercise of powers under Section 4(2) read with Section 3(c) of the Act, 1984. Moreover, by an order dated 10.4.1997 (Annexure no. 15 to the writ petition), the Registrar Cooperative Societies, U.P. Lucknow, exercising powers of the Central Registrar under a notification dated 16.9.1985, superseded the committee of management of the petitioner-bank under the provisions of Section 48(1) of Act, 1984 and appointed a Board of Administrators of three persons which was challenged in a writ petition as mentioned above.

17. The Reserve Bank of India also permitted the petitioner-bank to open an office at Izzatnagar in Bareilly in exercise of powers under Section 23 read with Section 56(p) of the B.R. Act.

18. In the impugned order dated 26.12.2018, the respondent no. 2 has observed that the existing by-laws of the petitioner-bank are

registered under the State Act in the year 1973 and that the petitioner-bank has not produced any document evidencing that its by-laws had been amended at any time by the Central Registrar.

19. At this stage, it is pertinent to look into the laws enacted from time to time governing multi-state cooperative societies. The Act, 1912 was enacted by the Governor General of India in Council which received the assent of the Governor General on 1 March 1912 and was promulgated by publication in the Gazette of India dated 9.3.1912 to facilitate formation of the cooperative societies for the promotion of thrift and self-help among agriculturists and artisans and persons of limited means, and for that purpose to amend the law relating to Cooperative Societies. The Act, 1912 extended to the whole of British India having provisions for registration of such societies, rights and liabilities of members, duties and privileges of registered societies, their inspection, dissolution, and delegation of powers to the local government for the whole or any part of the province, and for any registered societies or class of such societies to make rules for carrying out the purposes of the Act, 1912. Section 18 of the Act, 1912 provided that registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution. Section 39 to 42 pertained to dissolution/cancellation of registration of a society.

20. The petitioner society was apparently registered in 1919 in Uttar Pradesh⁷ under the provisions of the Act, 1912, which Act, as stated, extended to the whole of British India.

⁷ Earlier called the United Provinces.

21. The Multi-Unit Cooperative Societies Act, 1942⁸, received the assent of the Governor General on 2-3-1942 and was published in the Gazette of India in Part IV dated 7.3.1942. The preamble of this Act read ‘An Act to provide for the incorporation, regulation and winding up of cooperative societies with objects not confined to one province’. The Act, 1942 extended to the whole of British India and applied to all cooperative societies with objects not confined to one province incorporated before the commencement of the Act, 1942, under the Cooperative Societies Act, 1912, or, under any other Act relating to cooperative societies in force in any province, and to all cooperative societies with objects not confined to one province to be incorporated after the commencement of the Act, 1942. The Statements of Objects and Reasons of the Act, 1942 were as follows-

“Multi-unit co-operative societies, that is to say co-operative societies operating over more than one province, are 'corporations' within the meaning of entry 33 in List I of the Seventh Schedule of the Government of India Act, 1935, and the legislative and executive jurisdiction in respect of their incorporation, regulation and winding up is exclusively Central. Any provisions of the Co-operative Societies Act, 1912, or of the Provincial Co- operative Acts which might purport to vest executive jurisdiction in respect of such multi-unit societies in provinces can have no valid basis. It is therefore, necessary to legislate for the incorporation, regulation and winding up of co-operative societies operating over more than one province.

2. The Bill applies to the multi-unit societies the existing legislation applicable to societies operating within a single province. It will apply to all multi-unit societies irrespective of the nature of their work. Provision has been made to enable the Government to appoint a Central Registrar but as the number of multi-unit societies in existence at present is small, it is proposed to entrust the functions of the Central Registrar to the Provincial Registrars until the growth in the numbers of multi-unit societies make the appointment of a Central Registrar necessary. Powers of inspection and audit of the branch offices of a multi-unit society will also be vested in the Registrars of the Provinces where such branch offices are situated, and they will also have the power to call for such returns and information from the branches of multi-unit societies as they can call for from single-unit societies registered by them.”

8 Act, 1942

22. Sections 2, 3 and 5 of the Act, 1942, as they originally stood, read as follows-

“2. Co-operative societies to which this Act applies registered before commencement of this Act- (1) A co-operative society to which this Act applies which has been registered in any province under the law relating to co-operative societies in force in that province shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies, but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a province other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) the Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the province.

“3. Co-operative societies to which this Act applies registered after commencement of this Act. (1) A society which might, if its objects were confined to one province, be registered as a co-operative society in any province under the law relating to co-operative societies in force in that province, shall, notwithstanding that its objects are not confined to the province in which its principal place of business is to be situated, be deemed for the purposes of registration as a co-operative society to be situated wholly in that province, and may be registered by the Registrar of Co-operative Societies of that province in accordance with the law relating to co-operative societies for the time being in force in that province, and if so registered shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society establishes a branch or place of business in a province other than that in which it is actually registered, it shall within six months from the date of establishment of the branch or place of business furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society is actually registered in that province.

.....

5. Penalty for failure to furnish information required under this Act.- If any co-operative society fails to furnish the information which it is required to furnish by or under sub-section (2) of Section 2 or sub-section (2) of Section 3, or to submit any return required to be submitted under either of those sub-sections, the society, and any officer or member of the society responsible for the failure, shall each be liable to fine which may extend to fifty rupees, and the registration of the society may, at the discretion of the Registrar of Co-operative Societies of the province in which the society is actually registered, be cancelled.”

23. The appointment and powers of Central Registrar of the cooperative societies was specified in Section 4. Section 5 dealt with penalty. Section 6 delegated power to the Central Government to make rules by notification in the official Gazette for carrying into effect the provisions of the Act, 1942.

24. As a result of reorganization of States, certain cooperative societies which had their objects confined to one state only became multi-unit cooperative societies. Section 5A was inserted in the Act, 1942 by the States Reorganization Act, 1956 which provided for reconstitution and reorganization of such multi-unit cooperative societies as Intra-State cooperative societies and for the formation of new cooperative societies and the transfer thereto of the assets and liabilities of such multi-unit cooperative societies.

25. The stand of the petitioner-bank is that they have a branch in Samastipur, which is in the State of Bihar, and also branch in the State of Uttarakhand. It is pertinent to mention here that Bihar became a separate State well before the Act, 1942 came into force. Therefore, given that the Act, 1942 was enacted for incorporation, regulation and winding up of Cooperative Societies operating over more than province, as such the petitioner-bank could only be covered under the Act, 1942 subject to its demonstrating that its 'objects' were not confined to one State.

Only in such a case, the petitioner-Bank in terms of the deeming clause in Section 2 of the Act, 1942 would be deemed to be duly registered in the province of Bihar under the law there in force relating to Cooperative Societies, and, consequently, for the purpose only of registration, control and dissolution, the petitioner-bank can then claim to be covered under the law relating to Cooperative Societies in force for the time being in the province in which it was actually registered, that is, the State of Uttar Pradesh. However, the proviso in sub-section (1) of Section 2 specified that for other purpose, namely for furnishing to the Registrar of the Cooperative Societies of the province in which a branch or place of business is situated, which is other than that in which it is actually registered, a copy of its registered by-laws, returns and supply any information that the said Registrar may require to be submitted or supplied to him by a Cooperative Society actually registered in that province, in terms of sub-sections (2) and (3) thereof.

26. After the States Reorganisation Act, 1956, the Cooperative Societies (U.P. Amendment) Act, 1956 [U.P. Act No.X of 1957]⁹ was passed by the Uttar Pradesh Legislature and assented to by the President on March 7 and published in the U.P Gazette, Extraordinary, dated March 12, 1957. The express purpose of this

⁹ Amendment Act, 1956

Act as reflected in its preamble was to amend the Act, 1912. Under Section 2 of the Amendment Act, 1956, *inter alia*, under Sections 11-A, 11-B, 11-C, 11-D, 11-E and 11-F were added after the existing Section 11 of the Act, 1912. The amendments were made to attune the Act, 1912 to bring it in line with the requirements of the State of Uttar Pradesh. Thereafter, of course, in exercise of the State's legislative right under Entry 32 of List II of the Seventh Schedule to the Constitution, the U.P. Cooperative Societies Act, 1965¹⁰ was enacted. The Act, 1912 in its application to Uttar Pradesh then stood repealed¹¹.

27. In the Act, 1942, Sections 5-A and 5-B were inserted by Section 105 of the States Reorganisation Act, 1956 with effect from 1.11.1956. Section 105 of the States Reorganisation Act, 1956 reads as under:-

“105. Amendment of Act 6 of 1942.—In the Multi-Unit Co-operative Societies Act, 1942 (6 of 1942), after section 5, the following sections shall be inserted, namely:—

“5A. Transitional provisions regarding certain co-operative societies affected by reorganisation of States.—(1) Where by virtue of the provisions of Part II of the States Reorganisation Act, 1956, any co-operative society which, immediately before the 1st day of November, 1956, had its objects confined to one State becomes, as from that day, a multi-unit co-operative society, it shall be deemed to be a co-operative society to which this Act applies and shall be deemed to be actually registered in the State in which the principal place of business of the co-operative society is situated.

(2) If it appears to the Central Registrar of Co-operative Societies necessary or expedient that any such society should be reconstituted or reorganised in any manner or that it should be dissolved, the Central Registrar may, with the approval of the Central Government, place before a meeting of the general body of the society held in such manner as may be prescribed by rules made under this Act, a scheme for the reconstitution, reorganisation or dissolution of the society, including proposals regarding the formation

10 U.P. Act, 1965

11 By Section 134 of the U.P. Act, 1965

of new co-operative societies and the transfer thereto of the assets and liabilities of that 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 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-law 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 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 whose jurisdiction the principal place of business of the multi-unit co-operative society is situated.

5B. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power or authority exercisable by the Central Registrar of Co-operative Societies under this Act shall, in relation to such matters and subject to such conditions as may be specified in the direction, be exercisable also by such Registrar of Co-operative Societies of a State or by such officer subordinate to the Central Government or to a State Government as may be specified in the notification.”.

28. Thereafter, Section 5-A of the Act, 1942 was amended by the Multi-Unit Cooperative Societies (Amendment) Act, 1962 by Section 2 of the Amendment Act, 1962, which is quoted below:-

“2. **Amendment of Section 5A.**- In Section 5A of the Multi-unit Co-operative Societies Act, 1942 (6 of 1942) (hereinafter referred to as the principal Act),-

(i) in sub-section (2), for the words "including proposals, regarding the formation of new co-operative societies and the transfer thereto of the

assets and liabilities of that society", the following shall be substituted, namely:-

"including proposals regarding, -

- (a) the formation of new co-operative 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 co-operative societies in existence immediately before the date of that meeting of the general body.";

(ii) after sub-section (4), the following sub-section shall be inserted, namely:-

"(4A) 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 co-operative society to any other existing co-operative society referred to in clause (b) thereof, the scheme shall not be binding on that existing society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by the existing society by a resolution passed by a majority of the members present at a meeting of its general body."

29. In the year 1984, the Act, 1984 was enacted and promulgated, the application of which was provided in Section 2 thereof which reads as follows-

“2. Application.- This Act shall apply to-

(a) all co-operative societies, with objects not confined to one State, which were incorporated before the commencement of this Act.

(i) under the Co-operative Societies Act, 1912, or

(ii) under any other law relating to co-operative societies in force in any Statute or in pursuance of the Multi-unit Co-operative Societies Act, 1942

and the registration of which has not been cancelled before such commencement; and

(b) all multi-State Co-operative Societies,”

30. Clause (k) of Section 3 of the Act, 1984 defined “multi-State co-operative society” as meaning a society registered or deemed to be registered under the Act, 1984 and included a national co-operative society.

31. In the Act, 1984, which repealed the Act, 1942, a cooperative bank was defined as Multi-state Cooperative Society which undertakes banking businesses.

32. Under Section 4 of the Act, 1984, the appointment and powers of a Central Registrar were specified. Section 5 provided which Multi-State Cooperative Society could be registered under the Act. The application for registration was to be made under Section 6, and Section 7 provided for the registration of such Society. Section 8 dealt with issuance of registration certificate by the Central Registrar.

33. Section 17 of the Act, 1984 provided for the cases in which the registration certificate of a multi-State cooperative societies could be cancelled. Section 52 provided multi-State cooperative societies to be body corporate on their registration, by the name under which it was registered, having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted. Chapter IX provided for winding up of multi-State cooperative societies, appointment of liquidator and his powers and disposal of assets. Under this Chapter, the Central Registrar was empowered to cancel registration of a multi-State cooperative society after considering the report of the liquidator and it was provided that on such cancellation, the society would stand dissolved.

34. Under Chapter XII of Act, 1984, matters pertaining to Societies which become Multi-State Cooperative Societies

consequent upon reorganisation of States were referred to. Section 95, which fell under this Chapter, provided that Co-operative societies functioning immediately before reorganisation of States which had its objects confined to one State became as from that day, a multi-State co-operative society, it would be deemed to be a multi-State co-operative Society registered under the corresponding provisions of the Act, 1984. The power of the Central Registrar and sanctioning of a scheme for reconstitution or reorganization of any such society, etc. are provided for in this Section.

35. It is important to note that in the Act, 1984, Section 103 saved existing multi-State cooperative societies. Section 103 read as follows:-

“103. Savings of Existing multi-State co-operative societies.-

(1) Every multi-State co-operative society existing immediately before the commencement of this Act which has been registered under the Cooperative Societies Act 1912 or under any other Act relating to cooperative societies in force, in any State or in pursuance of the provisions of the Multi-unit Co-operative Societies Act, 1942, shall be deemed to be 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, or the rules, continue to be in force until altered or rescinded.

(2) All appointments, rules and orders made, all notifications and notices issued and all suits and other proceedings instituted under any of the Acts referred to in sub-section (1) shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling the registration of a multi-State co-operative society shall be deemed, unless the society has already been finally liquidated, to be an order made under Section 77 for its being wound up.”

Therefore, the petitioner-bank being registered under the Act, 1912 and on demonstrating that it would be deemed to be registered under Section 2 of the Act, 1942 could be deemed to be registered under the corresponding provisions of the Act, 1984 in view of the aforesaid Section 103 and, consequently, its by-laws, insofar as they

were not inconsistent with the provisions of the Act, 1984, or the rules, would continue to be in force until altered or rescinded.

36. It is pertinent to mention here that till the time the Act, 1942 held sway, that is to say till the time of its repeal by the Act, 1984, for all the purposes of registration, control and dissolution, the cooperative societies whose objects were not confined to one State would have been subject to the law relating to cooperative societies for the time being in force in the province/State in which it was actually registered, that is, the State of Uttar Pradesh. Therefore, till the repeal of the Act, 1942 by the Act, 1984 the provisions of the Act, 1912 as amended by the Amendment Act, 1956, and after its repeal by the U.P. Act, 1965, the provisions of the U.P. Act, 1965, with regard to such multi State Cooperative Societies, continued to operate and cover all the matters for purposes of registration, control and dissolution.

37. The Act, 2002 came into force on 19.8.2002. A cooperative bank was defined as meaning a Multi-State Cooperative Society which undertakes banking business. A Multi-State Cooperative Society is defined under clause (p) of Section 3 of the Act, 2002 to mean a society registered or deemed to be registered under that Act and to include a national cooperative society and a federal cooperative.

38. Various sections of Chapter II of the Act, 2002 provide for the appointment and powers of a Central Registrar and the registration of Multi-State Cooperative Societies. A Multi-State Cooperative Society shall be rendered a body corporate on its registration by the name under which it is registered having perpetual succession and common seal, and with power to acquire and hold and dispose of property, both movable and immovable, enter into contract, institute and defend suits and other legal proceedings and to do all things

necessary for the purposes for which it is constituted and, shall, by the said name, sue or be sued; it provides for amendment of by-laws of a Multi-State Cooperative Society and its coming into operation and its registration by the Central Registrar. Section 21 provides for cancellation of registration certificate of Multi-State Cooperative Societies in certain cases. Chapter X provides for winding up of Multi-State Cooperative Societies, appointment of arbitrators and his powers; disposal of assets; power of Central Registrar to order the registration of the Multi-State Cooperative Society to be cancelled and on such cancellation that society shall stand dissolved. Section 103 under Chapter XIII provides that the Co-operative society functioning immediately before reorganisation of States which 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. It also provides power of the Central Registrar, of preparation of a scheme for reconstitution and reorganization of such societies, etc..

39. Section 126 is the repeal and saving clause of the Act, 2002. This provision reads as under:-

“126. Repeal and saving.— (1) The Multi-State Co-operative Societies Act, 1984 (51 of 1984) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Multi-State Co-operative Societies Act, 1984 (51 of 1984) shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(3) Every multi-State co-operative society, existing immediately before the commencement of this Act, which has been registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other Act relating to co-operative societies in force, in any State or in pursuance of the provisions of the Multi-unit Co-operative Societies Act, 1942 (6 of 1942), or the Multi-State Co-

operative Societies Act, 1984 (51 of 1984), shall be deemed to be 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, or the rules, continue to be in force until altered or rescinded.

(4) All appointments, rule and orders made, all notifications and notices issued and all suits and other proceedings instituted under any of the Acts referred to in sub-section (1) shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling the registration of a multi-State co-operative society shall be deemed, unless the society has already been finally liquidated, to be an order made under section 86 for its being wound up.

(5) The provisions of this Act shall apply to—

(a) any application for registration of a multi-State co-operative society;

(b) any application for registration of amendment of bye-laws of a multi-State co-operative society,

pending at the commencement of this Act and to the proceedings consequent thereon and to any registration granted in pursuance thereof.

(6) Save as otherwise provided in this Act, any legal proceeding pending in any Court or before the Central Registrar or any other authority at the commencement of this Act shall be continued to be in that Court or before the Central Registrar or that authority as if this Act had not been passed.”

40. Therefore, under Section 126 of the Act, 2002, the deemed registration provided for in Section 103 of the Act, 1984 continues to be in force and has the effect as if made, issued, given or done under the corresponding provisions of the Act, 2002.

Moreover, under sub-section (3) of Section 126, the covered cooperative society would be deemed to be registered under the corresponding provisions of the Act, 2002 and the bye-laws of such society shall, insofar as they are not inconsistent with the provisions of the Act, 2002, or the rules, continue to be in force until altered or rescinded.

Under sub-section (5) of Section 126 of the Act, 2002, the provisions of the Act, 2002 apply to -

(a) any application for registration of a multi-State cooperative society;

(b) any application for registration for amendment of bye-laws of a multi-State cooperative society,

pending at the commencement of the Act, 2002 and to the proceedings consequent thereon and to any registration granted in pursuance thereof.

Finally, under sub-section (6) of Section 126, save as otherwise provided in the Act, 2002, any legal proceeding pending in any court or before the Central Registrar or any other authority at the commencement of the Act, 2002 shall be continued to be as if the Act, 2002 had not been passed.

41. It is evident from the above that the aspect of registration of the petitioner-Bank, as a Multi-State Cooperative Society, that was originally registered in 1919 could not have been in issue in view of the provisions of the Act, 1912, as well as Section 2 of the Act, 1942 subject to its demonstrating that its objects were not confined to one province/State and the date from which its objects so provided. Further, in such a case its registration could not have been an issue, given the provisions of Section 103 of the Act, 1984, and, also the provisions of Section 126 of the Act, 2002.

42. An application for registration of a multi-State cooperative society is different from an application for registration of amendment of its by-laws including change of name of a multi-State cooperative society. The previous proceedings and developments may now be viewed in the backdrop of the orders of this Court dated 21.3.2018 passed in Writ-C No.38808 of 2017 and dated 12.10.2018 passed in Writ-C No.16029 of 2018.

43. The respondent no. 2 in paragraph nos. 6 and 8 of its counter affidavit has stated as follows:

“6. That in reply to para 6 & 7 of the Writ Petition it is submitted that the amendment of bye-laws dated 3.5.1973 has been registered under the U.P. State Cooperative Societies Act, 1966 which is the State Cooperative Act and not under the Multi Unit Act, 1942 which was the Central legislation existing at that time. Multi Unit Act, 1942 has been succeeded by MSCS Act, 1984 and subsequently by MSCS Act, 2002. and the jurisdiction of the U.P. Cooperative Societies Act extends to State of U.P. only and not beyond that and no further amendments to the bye-laws have taken place thereafter. As per the existing bye-law no. 3(i) of the Bank, definition of "Act" has been given as "Act" means U.P. Cooperative Societies Act 1965 (Act XI of 1966) as amended from time to time and under bye-law no 3(ix) defines "Registrar" as “Registrar means the person for the appointed as Registrar of Cooperative Societies under Section 3 of the Act” which means the U.P. Act.

8. That in reply to para 13 to 19 of the petition it is submitted that the bye-laws of the Bank have been registered under the U.P. Cooperative Societies Act and the jurisdiction of the said Act extends to State of U.P. only and not beyond that and no further amendments to the bye-laws have taken place thereafter. Therefore the Bank is not authorized to admit members from States outside Uttar Pradesh”

As far as the averments in the counter affidavit relate to the law regarding registration of a society, they are not based on a proper appreciation of the law in force from time to time. As stated above, in view of the provision of Section 2 sub-section (1) of the Act, 1942 for all the purposes of registration, control and dissolution, a Multi-State Cooperative Sociality was subject to the law relating to cooperative societies in force for the time being in the province, that is, the State in which it was actually registered. Before the Act, 1984 came into force repealing the Act, 1942, the provisions of the Act, 1912, as subsequently amended by the Amendment Act, 1956 and thereafter, at present the provisions of U.P. Act, 1965, govern the

aspects of registration, control and dissolution of the Multi State Cooperative Society. Therefore, the amendments in the by-laws of the petitioner-Bank that were purportedly made in 1973, in so far as they refer to the provisions of the U.P. Act, 1965 and the rules made thereunder, were required to be registered in accordance with law in force in the State of Uttar Pradesh at the relevant time, which is the U.P. Act, 1965.

44. It would be pertinent to refer to the observations of the Supreme Court in the case of **Apex Cooperative Bank of Urban Bank of Maharashtra & Goa Ltd. Vs. Maharashtra State Cooperative Bank Ltd. and others**¹² which are as under:

“**28.** Under the Multi-Unit Act if a society had objects not confined to one State then such a society was deemed to be registered even in other States, **but for purposes of registration, control and dissolution it was the State law where it was first registered which continued to operate.** Thus, after the enactment of the Multi-Unit Act it became clear that even though a society may be deemed registered under the Multi-Unit Act, but for purposes of registration, control and dissolution it continued to be bound by the law relating to cooperative societies for the time being in force in the State in which it was first registered. More importantly, after the enactment of the Multi-Unit Act, the Cooperative Societies Act, 1912 only dealt with cooperative societies confined to one Province. Societies with objects not confined to one Province were deemed registered under the Multi-Unit Act.”

(emphasis supplied)

45. The petitioners state that in the year 1973, the name of their society was changed to “Mechanical Department Primary Cooperative Bank Limited” and the certificate to that effect was issued by the Central Registrar, Cooperative Societies, U.P., Lucknow on 3.5.1973. But, admittedly, the original registration certificate dated 3.5.1973 and a list of amendments that may have been carried out in the by-laws of the society are not available.

¹² (2003) 11 SCC 66

Though the petitioners claim to have members of the State of Bihar, it has not been demonstrated by them that they were granted licence by the Reserve Bank of India to open an office at Samastipur in Bihar. There is no material to conclusively demonstrate from the record that the 'object' of the petitioner-society were not confined to one State. A perusal of the order dated 21.3.2018 passed by this Court in Writ-C No.38808 of 2017 indicates that it was passed on the concessions made by the learned counsel for the respondents. Apparently, such concessions were made on behalf of the respondents by the learned counsel on matters of law and that too without specific instructions from the concerned respondent and as such may not bind the respondents¹³.

46. The other order dated 12.10.2018 passed by this Court in Writ-C No.16029 of 2018 was also passed on the basis of consent of the learned counsel for the parties. No finding with regard to the aspect of registration of the petitioner-bank or grant of licence by the Reserve Bank of India in respect of another State, was returned by the Court.

47. It is pertinent to mention here that in the by-laws of the petitioner-bank that is Annexure-1 to the writ petition in clause 2, the area of operation is stated to extend over the whole railway system worked by North Eastern Railway including places where the North Eastern Railway may have offices. The registered office is stated to be at Gorakhpur. Under clause 5, the membership eligibility is of all permanent employees of the Mechanical Engineering Department, North Eastern Railway, temporary employees of the Mechanical Engineering Department working against permanent posts and have more than one year's service, etc.

¹³ See *Himalayan Cooperative Group Housing Society vs. Balwan Singh* (2015) 7 SCC 373 (paragraphs 22, 27, 32)

In the order of the Central Registrar dated 20.4.2018 which was passed pursuant to the order of 21.3.2018 passed in Writ-C No.38808 of 2017, it is reflected that information had been sought by the Authority from the Railway Board regarding names of the divisions falling under North Eastern Railway along with details of the districts where the offices of these divisions are located. The Railway Board, in its response, informed that the North Eastern Railway has its Headquarter at Gorakhpur and has three divisions, Lucknow Division, Izzatnagar Division and Varanasi Division, which have their offices at Lucknow, Bareilly and Varanasi respectively. The aforesaid order of 20.4.2018 of the Central Registrar was set aside in the order of 12.10.2018 in Writ-C No.16029 of 2018. In its representation dated 22.10.2018 moved before the Central Registrar, the petitioner-bank stated that the three divisions of the North Eastern Railway cover the State of U.P., parts of Bihar and Uttarakhand. The North Eastern Railway system's map and printout of the relevant page of the website of North Eastern Railway, and, list of current membership in three States of U.P., Uttarakhand and Bihar, were enclosed with the representation as evidence.

48. However, the aforesaid evidence stated to be filed, though may be suggestive of the area of operation of the petitioner-bank being not confined to one State, is not conclusive proof, particularly in view of the aforesaid information received from the Railway Board by the Central Registrar. Moreover, for want of any certified copy or admitted copy of the by-laws or of the amendments to the by-laws duly registered, no conclusion regarding the area of operation or objects of the petitioner-bank being not confined to one State, can be drawn.

Even the submission on behalf of the petitioners that the State of Uttarakhand, that was formed pursuant to the Uttar Pradesh

Reorganisation Act, 2000, included the areas to which the operation of the petitioner-bank extends, can be sustained by demonstrating either deemed registration under the Act, 1942 or that its objects extended to any area within the State of Uttarakhand. This, as also stated hereinafter, the petitioner-bank has failed to demonstrate.

49. As discussed above, to avail of the benefit of the deeming clause under Section 2 of the Act, 1942, it was for the petitioners to have demonstrated by placing cogent evidence that its 'objects' were not confined to one State. This, unfortunately, they have failed to do. As such, the aspect of their registration as a Multi State Cooperative Society on the basis of the aforesaid deeming clause in the Act, 1942, or on the basis of Section 103 of the Repealed Act, 1984, or even on the basis of Section 126 of the Act, 2002, has not been demonstrated. Therefore, for want of such a deemed registration, the petitioner-bank was required to demonstrate that it was otherwise registered as a Multi State Cooperative Society which too it has failed to do. Though this Court is conscious of the fact that several orders have been passed by the Central Registrar and there are decisions of the writ Court giving directions, *inter alia*, to the Central Registrar with regard to conduct of elections of the petitioner-society, the fact remains that the aspect of registration or deemed registration under the Act, 2002 was required to be demonstrated by the petitioner-bank in this petition, which it has not done. That is not to say that previous directions of the Central Registrar regarding supersession of the Committee of Management and on matters pertaining to elections of the petitioner-bank would be rendered *non est*. We make it clear that the order passed by the Central Registrar, which is impugned and which is based on the Circular of the Reserve Bank of India is under consideration and, therefore, the present judgment.

The two questions stand answered accordingly.

Consideration of Question No. 3

50. The third question is, ‘Whether the circular of the Reserve Bank of India can legally mandate prior permission of Reserve Bank of India by the petitioner-bank for seeking revision of its by-laws by amendment?’

51. The Supreme Court in the case of **Pandurang Ganpati Chaugule Vs. Vishwasrao Patil Murgud Sahakari Bank Limited**¹⁴ was considering the applicability of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002¹⁵ to cooperative banks. The Parliament’s competence to amend Section 2(c) of the SARFAESI Act by adding sub-clause (iva) – a multi-State cooperative bank, was also questioned. The issue that arose was whether the definition of ‘banking company’ contained in Section 5(c) of the B.R. Act covers cooperative banks registered under the State law and also multi-state cooperative societies under the Act, 2002. The Supreme Court considered the following questions:

“(1) Whether ‘co-operative banks’, which are co-operative societies also, are governed by Entry 45 of List I or by Entry 32 of List II of the Seventh Schedule of the Constitution of India, and to what extent?

(2) Whether ‘banking company’ as defined in Section 5(c) of the BR Act, 1949 covers co-operative banks registered under the State Co-operative Laws and also multi-State co-operative societies?

(3)(a) Whether co-operative banks at the State level and multi-State level are ‘banks’ for applicability of the SARFAESI Act?

(3)(b) Whether provisions of Section 2(c) (iva) of the SARFAESI Act on account of inclusion of multi-State co-

14 (2020) 9 SCC 215

15 SARFAESI Act

operative banks and notification dated 28.1.2003 notifying cooperative banks in the State are ultra vires?”

52. While considering the aforesaid questions, the Supreme Court in **Pandurang Ganpati Chaugule** (supra) observed as follows:-

“87. It is apparent that “incorporation, regulation and winding up” of the cooperative societies are covered under Schedule VII List II Entry 32 of the Constitution of India, whereas “banking” is covered by List I Entry 45. Thus, aspect of “incorporation, regulation and winding up” would be covered under List II Entry 32. However, banking activity of such cooperative societies/banks shall be governed by List I Entry 45. The said banks are governed and regulated by legislation related to List I Entry 45, the BR Act, 1949 as well as the Reserve Bank of India Act under Entry 38 of List I. In the matter of licensing and doing business, a deep and pervasive control is carved out under the provisions of the BR Act, 1949 and banking activity done by any entity, primary credit societies, is a bank and is required to submit the accounts to Reserve Bank of India, and there is complete control under the aforesaid Act. For activity of banking, these banks are governed by the legislation under List I Entry 45. Thus, recovery being an essential part of the banking, no conflict has been created by providing additional procedures under Section 13 of the Sarfaesi Act. It is open to the bank to adopt a procedure which it may so choose. When banking in pith and substance is covered under List I Entry 45, even incidental trenching upon the field reserved for the State under Entry 32 List II is permissible.

88. There can be various aspects of an activity. The cooperative societies may be formed under the provisions of the State Cooperative Acts. The State law provides for “incorporation, regulation and winding up” under List II Entry 32, a membership registration, and other matters can be governed by List II Entry 32, and, at the same time, the aspects relating to the banking, licensing, accounts, etc. can be covered under Entry 45 List I.

89. In *State of W.B. v. Kesoram Industries Ltd.* [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201], a Constitution Bench considered the aspects' theory and considered the field of taxation under Lists I and II and opined that there might be overlapping in fact, but there would be no overlapping in law. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. It was held that Entries 52, 53, and 54 are not heads of taxation. The field of taxation is covered by Entries 49 and 50 of List II. It was held that the same transaction might involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects. There was no question of conflict solely on account of two aspects of the same transaction being utilised by two legislatures for two levies. The Court held: (SCC p. 330, para 141)

“141. As held in Goodricke Group Ltd. [Goodricke Group Ltd. v. State of W.B., 1995 Supp (1) SCC 707], which we have held as correctly decided, this Court has noted the principle of law well established by several decisions that the measure of tax is not determinative of its essential character. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects. In our opinion, there is no question of conflict solely on account of two aspects of the same transaction being utilised by two legislatures for two levies both of which may be taxes or fees or one of which may be a tax and the other a fee falling within two fields of legislation respectively available to the two.”

90. The legislation and entries are to be considered in pith and substance is the settled principles of law, and incidental trenching is permissible. Thus, we are of the opinion that Section 2(c)(iv) (a) of the Sarfaesi Act and the Notification dated 28-2-2003 cannot be said to be ultra vires. They are within the ken of Schedule VII List I Entry 45 to the Constitution of India.”

52.1. While considering Article 243-ZL incorporated in the Constitution by the 17th Amendment, the Supreme Court observed as follows:-

“94. The third proviso to Article 243-ZL(1) clarifies that in case of a cooperative society carrying on the business of banking, the provisions of the BR Act, 1949 shall also apply besides the State Act. The fourth proviso to clause (1) of Article 243-ZL also contains an exception with respect to multi-State cooperative society carrying on the business of banking, the provisions of this clause shall have the effect as if for the words “six months”, had been substituted by words “one year.” Thus, the constitutional provision itself makes a distinction between a cooperative bank and other cooperative societies and applied law enacted under Schedule VII List I Entry 45. It set at rest any controversy concerning the applicability of the BR Act, 1949 to banks run by cooperative societies. It also makes it clear that such banks are governed by Schedule VII List I Entry 45.”

52.2. While considering its decision in the case of **Virendra Pal Singh vs. Registrar of Cooperative Societies**¹⁶, the Supreme Court observed as follows:-

“101. In the aforesaid decision, it was held that under the U.P. Cooperative Societies Act, the State was competent under List II Entry 32 to deal with incorporation, regulation and winding up of cooperative banks. However, the main aspect of the activity of

¹⁶ (1980) 4 SCC 109

the cooperative bank relating to banking was covered by the BR Act, 1949, and the Reserve Bank of India Act, which legislations are related to Schedule VII List I Entries 45 and 38. The aspects of “incorporation, regulation and winding up” are covered under Schedule VII List II Entries 32. In our opinion, the activity of banking by such bankers is covered by List I Entry 45 considering the doctrine of pith and substance, and also considering the incidental encroachment on the field reserved for the State is permissible.

102. The concept of regulating non-banking affairs of society and regulating the banking business of society are two different aspects and are covered under different Entries i.e. List II Entry 32 and List I Entry 45, respectively. The law dealing with regulation of banking is traceable to List I Entry 45 and only Parliament is competent to legislate. Parliament has enacted the Sarfaesi Act. It does not intend to regulate the incorporation, regulation, or winding up of a corporation, company, or cooperative bank/cooperative society. It provides for recovery of dues to banks, including cooperative banks, which is an essential part of banking activity. The Act in no way trenches on the field reserved under List II Entry 32 and is a piece of legislation traceable to List I Entry 45. The decision in Virendra Pal Singh [Virendra Pal Singh v. Registrar of Coop. Societies, (1980) 4 SCC 109 : 1980 SCC (L&S) 516] has been rendered regarding service regulations. It does not apply to the instant case concerning the regulation of “banking” covered under List I Entry 45. The Court did not deal with the aspect of the regulation of banking in the said decision as it was not required to be decided. Thus, the ratio of the decision operates in a different field. Moreover, the U.P. Cooperative Services Act was saved on the ground of incidental trenching on the subject of another List i.e. Entry 45 List I, which is permissible.”

52.3. While recording its disagreement on findings recorded on various aspects by a three Judge Bench of the Supreme Court in **Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex (P) Ltd.**¹⁷, the Supreme Court observed as follows:-

“120. The cooperative banks are doing the banking business, it could not be said to be an incidental activity but main and only activity. We are unable to subscribe to the view taken in Greater Bombay Coop. Bank Ltd. [Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd., (2007) 6 SCC 236] as the provisions were not correctly appreciated.

121. The reason is given in Greater Bombay Coop. Bank Ltd. [Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd., (2007) 6 SCC 236] that comprehensive machinery is provided in the State Act, could not have come in the way of Parliament enacting a law as to recovery within the purview of “banking” in

17 (2007) 6 SCC 236

List I Entry 45 as the same is its essential part. Even incidental trenching upon other fields cannot invalidate legislation. Equally futile is the argument that Parliament did not amend Section 5(c) of the BR Act, 1949; in fact, Parliament did so under Section 56(a) concerning its application to cooperative banks. A large number of provisions added in Chapter V by way of amending Section 56 cannot be ignored and set at naught. The extensive amendments made in Part V of the BR Act, 1949, have to be given full effect. In case cooperative banks are kept outside the purview of the BR Act, 1949, and other legislation under Entry 45 and the RBI Act, no licence can be granted, and they cannot do banking as that is not permissible without compliance of various provisions as provided in the BR Act, 1949. They would have to close down and stop the business forthwith.

122. The cooperative banks, which are governed by the BR Act, 1949, are involved in banking activities within the meaning of Section 5(b) thereof. They accept money from the public, repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise. Merely by the fact that lending of money is limited to members, they cannot be said to be out of the purview of banking. They perform commercial functions. A society shall receive deposits and loans from members and other persons. They give loans also, and it is their primary function. Thus, they are covered under “banking” in List I Entry 45.”

52.4. While considering its judgment in **Apex Coop. Bank of Urban Bank of Maharashtra and Goa Limited vs. Maharashtra State Coop. Bank Ltd.**¹⁸ in which the question arose concerning the licensing of cooperative societies by Reserve Bank of India to carry on banking business under the provisions of the Banking Regulation Act, 1949, the Supreme Court observed :-

“133. In Apex Coop. Bank of Urban Bank of Maharashtra & Goa Ltd. [Apex Coop. Bank of Urban Bank of Maharashtra & Goa Ltd. v. Maharashtra State Coop. Bank Ltd., (2003) 11 SCC 66] the question arose concerning licensing of cooperative societies by Reserve Bank of India to carry on banking business under the provisions of the BR Act, 1949. It was held that cooperative banks, which are not State cooperative banks or Central cooperative banks or primary cooperative banks as defined in Section 56(cci) of the BR Act, 1949, were not eligible for licensing. The grant of licence by Reserve Bank of India to cooperative banks, which were not registered under the Multi-State Cooperative Societies Act, 1984, was not justified. The powers of Reserve Bank of India under the Multi-State Cooperative Societies Act were exercisable only for cooperative banks, not to any other cooperative societies not doing business of banking. It was opined: (SCC p. 82, para 25)

18 (2003) 11 SCC 66

“25. Another aspect which must be noticed is that in the Constitution of India, the subject pertaining to cooperative societies is in the State List i.e. Schedule VII List II Entry 32. The Union List has Schedule VII List I Entry 44 which deals with corporations. In this case we are not concerned with the validity of a Central legislation and thus do not deal with that aspect. For purpose of the judgment we will take it that a cooperative society with objects not confined to one State would fall within the term corporation, and thus a Central legislation may be saved. However, from the constitutional provisions it is clear that matters pertaining to cooperative societies are in the State List. Thus, many States have enacted laws relating to cooperative societies. We have not seen other Acts. However, as this case concerns a society in Maharashtra, the Maharashtra Cooperative Societies Act was shown to us. Significantly, this law does not define a cooperative society. It did not need to, as a society registered under it would be automatically covered. The need to define a cooperative society arises only in a Central legislation which does not cover all cooperative societies and thus needs to indicate to which society it applies.”

52.5. Finally, the Constitution Bench of the Supreme Court answered the reference as follows:-

“142.1. (1)(a) The cooperative banks registered under the State legislation and multi-State level cooperative societies registered under the MSCS Act, 2002 with respect to “banking” are governed by the legislation relatable to Schedule VII List I Entry 45 of the Constitution of India.

142.1. (b) The cooperative banks run by the cooperative societies registered under the State legislation with respect to the aspects of “incorporation, regulation and winding up”, in particular, with respect to the matters which are outside the purview of Schedule VII List I Entry 45 of the Constitution of India, are governed by the said legislation relatable to Schedule VII List II Entry 32 of the Constitution of India.

142.2. (2) The cooperative banks involved in the activities related to banking are covered within the meaning of “banking company” defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949, which is a legislation relatable to List I Entry 45. It governs the aspect of “banking” of cooperative banks run by the cooperative societies. The cooperative banks cannot carry on any activity without compliance of the provisions of the Banking Regulation Act, 1949 and any other legislation applicable to such banks relatable to “banking” in List I Entry 45 and the RBI Act relatable to Schedule VII List I Entry 38 of the Constitution of India.

142.3. (3)(a) The cooperative banks under the State legislation and multi-State cooperative banks are “banks” under Section 2(1)(c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under Section 13 of the Sarfaesi Act, a legislation relatable to Schedule VII List I Entry 45 to the Constitution of India, is applicable.

142.4. (3)(b) Parliament has legislative competence under Schedule VII List I Entry 45 of the Constitution of India to provide additional procedures for recovery under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to cooperative banks. The provisions of Section 2(1)(c)(iv-a), of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, adding “ex abundanti cautela”, “a multi-State cooperative bank” is not ultra vires as well as the Notification dated 28-1-2003 issued with respect to the cooperative banks registered under the State legislation.”

53. In the instant case, however, it is pertinent to note that the Act, 1984 as well as the extant Act, 2002 were enacted in purported exercise of power by the Parliament under Entry 44 List-I of Schedule VII of the Constitution of India.

54. In view of the judgment of the Supreme Court in **Pandurang Ganpati Chaugule** (supra), in which the provisions in Part-V of the B.R. Act were referred to in extenso, that is, the provisions in Section 56, which provides for the application of the B.R. Act to cooperative banks, the Supreme Court observed that as per the provisions of the B.R. Act, no business can be done by any cooperative society without obtaining a licence from the Reserve Bank of India. The *raison-d’etre* of cooperative banks being the business of banking, the same is dependent and governed by the Reserve Bank of India Act as well as the B.R. Act, which legislations are under, respectively, Entry 38 and Entry 45 of List-I of the Seventh Schedule of the Constitution of India.

55. There cannot be any cavil that the circulars of the Reserve Bank of India have statutory force. In the background of the

aforesaid position of law, the impugned order of the Central Registrar dated 26.12.2018 relying upon the provisions of the Circular of the Reserve Bank of India in its Circular dated 2.7.2018 would have to be viewed.

56. It is noted that the order of the Reserve Bank of India dated 09.08.2017, which was challenged in Writ-C No.38808 of 2017 by the petitioners, was not quashed by this Court in its judgment dated 21.3.2018, but the petition was disposed of in terms of the directions given therein based on consent of the counsel for the respondents. The subsequent order of the Central Registrar dated 20.4.2018 was passed declining issuance of certificate of registration to the petitioner-bank. Its challenge in Writ-C No.16029 of 2018 by the petitioners was successful and the order of the Central Registrar dated 20.4.2018 was set aside on the consent of counsel for the respondents. However, the order dated 09.08.2017 passed by the Reserve Bank of India remained intact.

57. By the impugned order of the Central Registrar dated 26.12.2018 want of prior permission (No Objection Certificate) for revision in the area of operation, as mandated by the Reserve Bank of India in its circular dated 2.7.2012, was taken as a ground for refusal of both registration and issuance of certificate of registration, under the Act, 2002.

58. A perusal of the counter affidavit filed on behalf of the Reserve Bank of India reflects that the financial condition of the petitioner-bank is poor. In the supplementary counter affidavit, it has been stated by the Reserve Bank of India that the petitioner-bank was not financially sound and well managed bank as per the criteria laid down by the Reserve Bank of India. Its net worth was Rs.10.09 crores as against the minimum requirement of Rs.50 crores as per paragraph 1.6 of Master Circular No.DCBR.LS.(PCB)MC.No.16/07.01.000/2015-16 dated 1.7.2015. The petitioner-

bank was accordingly informed. Repeated time was granted to the petitioner-bank by the Reserve Bank of India for getting itself registered before the Central Registrar, but the same was not done. Therefore, the petitioner-bank was required to convert the bank to a Uni-State Cooperative Bank and present the same for consideration. Accordingly, the petitioner-bank was advised by the Reserve Bank of India to ensure closure of its payment counter at Samastipur (Bihar) within 15 days and cancel the memberships given by the petitioner-bank in the other States. It has been noted above that the direction dated 9.8.2017 issued by the Reserve Bank of India to the petitioner-bank, which was challenged in Writ-C No.38808 of 2017, was not quashed by this Court. It still holds the field.

Therefore, particularly since the petitioner-bank has also not demonstrated its financial status to be in accordance with the requirements of the Reserve Bank of India as laid down in its Circular mentioned aforesaid, given the fact that the provisions of the BR Act are applicable to the petitioner-bank, we find no error in the letter dated 9.8.2017 issued by the Reserve Bank of India. The directions given in the letter dated 9.8.2017 are upheld.

59. As regards compliance by the petitioner-bank of the requirement of the Reserve Bank of India in its circular for obtaining its prior approval (No Objection Certificate), the Central Registrar is justified in relying on that circular for refusal of the registration of the amendments to the by-laws. As noted above, both the Act, 2002 as well as the Reserve Bank of India Act are legislations made in exercise of authority vested in the Parliament under Entry 44 and Entry 38, respectively, of List-I of the Seventh Schedule of the Constitution of India.

60. The circular of the Reserve Bank of India having statutory force and in view of the deep and pervasive control of the Reserve Bank of India on cooperative banks, given the provisions of the B.R.

Act, even if the circular incidently trenches on the provisions of the Act, 2002, (in the present case the registration of the amendments to the by-laws), the same is permissible keeping in view the observations of the Supreme Court in the case of **Pandurang Ganpati Chaugule** (supra).

61. Under the circumstances, it is open for the petitioner-bank to move for registration of the amendments to its by-laws as Uni-State Cooperative Bank after due prior approval (No Objection) of the Reserve Bank of India in terms of its circular/s in force. As regards any investments/deposits made with the petitioner-bank by any member of the petitioner-bank belonging to any State other than Uttar Pradesh, the same shall be dealt with by the petitioner-bank strictly in accordance with the directions of the Reserve Bank of India. The Reserve Bank of India is directed to take such steps and pass such directions as it deems fit with all expedition.

62. Subject to the above observations, this writ petition is **dismissed**.

Order Date :- 10.02.2025

sfa//SK/A.V. Singh