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REGULATION AND DE-REGULATION OF COOPERATIVES IN CONTEXT OF LEGAL FRAMEWORK

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ABSTRACT

The laws relating to cooperatives have been playing a vital role in the development of co-operative movement in India as well as in Tripura. These laws were enacted in compliance with co-operative principles. In Tripura 'The Co-operative Societies Act' was came into effect in 1974. The aim and objective of the said law is to consolidate and amend regulatory framework relating to cooperatives in the state. Broadly the statute having provisions relating to, registration, members and their rights and liabilities, incorporation, duties and privileges of societies, what kind of government aid could possibly be given to societies, property and funds of societies, how to manage societies, how to carry out audit, inquiry, inspection and suspension, procedure for deciding disputes, aspects to deal with liquidations, insured co-operative bank's, co-operative land development banks, offences and penalties, appeals, review and revision, and other miscellaneous matters. But with careful observation, it could be stated that the regulatory framework to control co-operatives in Tripura is centralized. The reason to say so, is The Co-operative Societies Act allowing co-operatives a very limited scope to be ruled by their own bylaws. Co-operatives should be given liberty to administer their day-to-day work but state enacted law have curtailed their liberty. The present paper is dealing with such provisions to show how cooperative societies liberty are being controlled by state enactments.

KEYWORDS

Cooperatives, centralized, bylaw.

INTRODUCTION

In India first legislative action in relation to cooperative was taken in 1904, when Cooperative Societies Act was enacted. The main objective of the Act was to introduce a simplified regulatory framework, which could possibly be understood by common man. Scopes were created so that provincial governments could make suitable rules to meet specific situation relating to their respective areas. Though the Act had certain weaknesses. The main weakness of this Act lies in restricting itself to only credit cooperatives as it permitted only the registration of the primary credit societies. This is why in 1912 another law was passed. This Act is Cooperative Societies Act 1912. This enactment became base for all other Act passed by various state governments including Tripura.

THE TRIPURA COOPERATIVE SOCIETIES ACT, 1974

The Tripura Cooperative Societies Act, 1974 was enacted to consolidate and amend the law relating to cooperative societies in the state.

REGISTRATION

According to the Act, the power to appoint registrar of cooperative societies have been vested upon the state government. Provision have been also allowing to appoint more persons to assist the registrar of cooperative societies. The Tripura Cooperative Societies Act states, a society which has its objective of promotion of economic interest or general welfare of its members or of the public may be registered under this Act.

MEMBERS AND THEIR RIGHTS

Everybody those are competent to enter into contract under the provision of Indian Contract Act 1872, may become a member of a society. The firm or company or any other body corporate constituted under any law or any society, which was registered under Societies Registration Act could be member. Even the government could be member of cooperative society. The act provides provisions regarding cessation of membership. According to the statutory provision, cessation of membership takes place, when a particular member voluntarily resigns, dies or he or she is expelled from the society. The law also provides the procedure for expulsion from membership. The expulsion of any member should follow passing of a resolution in the relevant matter. Resolution must be passed by the three fourth of the societies member. The Act provides rights and such include right to vote, right to inspect documents pertaining to rules, regulation, bylaws, last audited balance sheet including audit notes.

INCORPORATION, DUTIES AND PRIVILEGES OF SOCIETIES

Registration of a society makes it to be a body under which it is registered. The entity of such body is perpetual. It is the duty of societies to keep copies of Act, rules, bylaws, list of membership and it must remain open for inspection by any member. The privileges, those are provided in the Act are similar to all immunities provided to a legal person in India along with other benefits to be remitted. Under Section 44, the government may by notification published in official Gazette, may remit the stamp duty, any fee payable by any society for registration of documents or court fees, any other tax.

GOVERNMENT AID TO SOCIETIES

The government may subscribe share of any society with limited liability. For this purpose of government must enter into an agreement. The government is having liability in respect of share, in the event of winding up of the company to the limit it had subscribed shares. On other hand government may give loans to societies. The Act also states that the government may guarantee the payment of the principal debentures issued by a society and associated interest and also may guarantee the payment of the share capital of a society to its members. Government may guarantee that the payment of loans given by cooperative Bank to a society. The statute stated that such provisions will stand notwithstanding anything inconsistent contained in any other law in the country

PROPERTY AND FUNDS OF SOCIETIES

The statute states that, no part of the funds of a society other than net profits, shall be divided by way of bonus or dividend or otherwise among its members. The distribution of net profits will be carried out following a declaration by the annual general meeting in compliance the provision of this Act, The Tripura Cooperative Societies Act, 1974. The Act also stated no honorarium shall be paid out of the funds and assets of the society other than net profits and such honorarium shall not exceed the limit as statute prescribed.

MANAGEMENT OF SOCIETIES

The Act states, the final authority of every society shall vest in the general body of members in general meeting. The management of every society shall vest in a committee constituted in accordance with a provision of this Act, rules and the bylaws, which shall exercise such powers and perform such duties as may be conferred by this Act. Election of the members of a committee shall be by secret voting method. The members of the committee of the society shall hold office not more than three years. After the expiry of the tenure the committee shall hand over the charges to the newly elected committee.

OTHER PROVISIONS

The Tripura Cooperative Societies Act, 1974 provides provision relating to liquidation, offences and penalties, appeals, review and revision. Apart from these provisions the act provided provision regarding insured Cooperative Banks, cooperative Land development banks along with miscellaneous provisions. A miscellaneous provision of the law has given the procedure to recover sums due to government, registrars power to recover certain sums by attachment and sale of property, provision regarding delegation of power of registrar of federal societies.

ANALYSES OF STATUTORY PROVISIONS IN THE LIGHT OF GUIDELINES FOR COOPERATIVE LEGISLATION ISSUED BY INTERNATIONAL LABOUR ORGANISATION

From the above discussion it is very clear The Tripura Cooperative Societies Act, 1974 have provided many expressed provisions and some of such provisions also amended in 2009. The Tripura Cooperative Societies(Second Amendment) Act ,2009 amended Section 2, Section 9, Section 13, Section 14 , Section 20 , Section 21, Section 22, Section 27, Section 45, Section 46, Section 52, Section 59, Section 60, Section 61, Section 62, Section 65, Section 66, Section 67, Section 69, Section 70, Section 74, Section 78, Section 79, and different other new Sections were also inserted such as Section 10A, Section 20A, Section 21A, Section 47A, Section 66 A, Section 75A.

The Act has provided very detailed provision and releasing less scope for co-operative societies to be free from statutory compulsion. As already stated co-operatives are voluntary associations of persons, may only prosper if their members are autonomous in their economic activities.¹

The legal nature of the cooperative law depends on the definition of its objective. If it is to regulate the activity of the cooperative sector, it will be part of public economic law and should include, beside the rules on the formation, structure, operations and dissolution of co-operatives, also rules on establishment, the setup and the powers of a supervisory authority. If, on the other hand it is to only propose to potential cooperators a mode of organisation which will permit them to develop their activities in an autonomous manner, then it will be part of private law. In the context of structural adjustment to the requirements of human rights, democracy and the rule of law, private law is the logical choice.²

CONCLUSION

Regulatory framework is meant for regulation. Regulation could not be carried out on basis of imposed instructions for a long time. Where economic activities are concerned, regulatory framework must be liberal so that people can exercise their discretion. But the law that we are having in Tripura to regulate co-operatives societies are stringent and scope to comply with bylaws is very limited. So we need the deregulation of the framework, so that co-operatives societies could do freely in their own interest, keeping their economic and commercial objectives in mind.

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¹ Hagen .Henry, Guidelines for Cooperative Legislation ,2nd Revised Edition ,International Labour Organisation, Chapter 3 Page 11 , 2006

² *ibid.*

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