

(2008) 03 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 13251 of 2007

Baikundpur Vyapar Mandal Sahyog Samiti Ltd. and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Citation : (2009) 3 PLJR 177

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Yogendra Mishra, Raghunath Kumar and Y.K. Khan, for the Appellant; Y.V. Giri and I. Singh for Respondent Nos. 3 and 4 and G.P. 4 for the State, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—The two petitioners claim themselves to be a registered Cooperative Society and affiliated to the apex body known as Bihar State Cooperative Marketing Union (hereinafter referred to as BISCOMAUN). They are aggrieved by an amendment in the bye-laws brought about by BISCOMAUN and duly certified by issuance of certificate of registration by the Registrar Cooperative Societies, Bihar as contained in Annexure-2 to the writ application. They want not only quashing of the certificate of registration dated 6.11.2005 but also to declare the amended bye-laws to be illegal and therefore ineffectual. Respondent No. 3 i.e. the BISCOMAUN is a registered Cooperative Society which is the apex body to which the petitioners' societies are supposedly AFFILIATED. BISCOMAUN has own registered bye-laws, by virtue of which various kinds of membership are provided which would be evident from Chapter-IV Clause 6 of the same. The details of the kind the memberships falling in the criteria of Class-A to Class-D are given in paragraph 7 of the writ application. Petitioners have moved the High Court recently, when a demand was made upon them to enhance their contribution to the shares at a revised rate. Every existing member holding share of Rs. 25/- per share have been called upon to pay up the balance

amount of share money which was revised to Rs. 200/-. This has irked the petitioners. However they categorically do accept that basis for such demand, made by respondent No. 3, are amendments to the bye-laws which was proposed and carried out in a general meeting on 26.6.2005. These amendments to the bye-laws was approved by issuance of a Certificate of Registration of Amendment under Rule 17(2) of the Bihar Cooperative Societies Rules, 1959.

2. The challenge to the amendment to the bye-laws and the subsequent issuance of certificate of registration are primarily on the ground that the same has not been carried out in terms of Chapter 6 relating to general meeting specially Clause 21 of the bye-laws. It is their assertion that the mandatory 14 days notice for a general meeting was not given in writing to each member. Since under Clause 20(vi) any alteration rescinding or amendment to the bye-laws can only be made in the general meeting. Violation of the mandatory provision of Clause 21 goes to the root of the said amendment and even though certificate accepting the proposed amendment has been issued by the Registrar, Cooperative Societies, the same deserves to be struck down. There is no dispute with regard to the proposition urged at the bar by learned counsel for the petitioners but the issue will have to be tested in the background of the facts as well as what has been stated by the respondents in their counter affidavit.

3. Learned Senior Counsel appearing on behalf of respondent No. 3 i.e. the BISCOAUN raises some basic objections to the maintainability of the writ application. He states that in so far as petitioner No. 2 is concerned he has no entity because he is not even a member of the apex body and therefore he has no locus. As for the petitioner No. 1 is concerned, it is stated that the writ has been filed through one Surendra Prasad Sinha claiming himself to be the representative but then under Cooperative Society and Act there is no post and position of a legal representative. In absence of the office bearers of the society this writ application cannot be maintained through a representative. Yet another objection on behalf of the respondents is that it is a stale writ application filed many years after the bye-laws stood amended in the year, 2005 and certified as such by the Registrar, Cooperative Societies in the same year. This writ application has basically been filed by a set of interlopers with the primary object of delaying the election and schedule which has already been announced and is under way. He further submits that in terms of the amended bye-laws virtually every other cooperative societies who are members of the apex body have paid up the difference in amount of the share capital. Learned Senior Counsel appearing on behalf of respondent No. 3 even on the merit of the matter submits that there has not been any wrong doing or violation of the bye-laws in convening the general meeting and obtaining mandate on the will of the majority who participated in the said meeting.

4. Learned counsel for the petitioners submits that the present writ application is very much maintainable on behalf of the two petitioners even though he was not very sure about petitioner No. 2 but he surely asserts that Surendra Prasad

Sinha was the authorized representative to institute this writ application and pursue the same. In support of the same he has brought on record an extract of the resolution No. 2 which authorizes said Surendra Prasad Sinha to carry out the litigation on behalf of the said cooperative society.

5. This Court does not want to go into hyper-technical issue but there is a lurking doubt about the competence of Surendra Prasad Sinha maintaining the present writ application on behalf of the Cooperative, Society because there is no clear indication as to why the office bearers of the Society are not willing to come forward. Learned counsel appearing for the petitioners on the question of delay in challenging the amendment submits, based on the averment in the writ application, that they have only recently come to know of the said development and since every member of the Society was not given notice for the general meeting he was not supposed to know about the facts earlier. This explanation offered by the petitioner is not very convincing because if the petitioners are so conscious of their right and are willing to fight for running the affairs of respondent No. 3 in accordance with law then they ought to also know about such vital decisions made way back in June, 2005.

6. Learned Senior Counsel appearing for respondent No. 3 addressed this Court on the merit of the matter also. He has brought on record evidence to show that prior notice was given to the members who can participate in the general meeting. According to him as of now there are only 129 members who are entitled to a notice for the general meeting and the members of the general meeting are different from the members of the society or the members of the apex body as such. He brings to my notice Clause 22 of the bye-laws of respondent No. 3 and asserts that from very time immemorial in terms of the said clause notices are given only to the delegates who represent their societies as members in the general meeting and they alone participate in the general meeting. There is no direct participation of all the members of the society. This participation in the general meeting are through delegates. They have in terms of the agenda of the general meeting held on 26.6.2005 deliberated on the same and also approved the amendments in the bye-laws in conformity with Clauses 21 and 23. Learned Senior Counsel only to clarify the mist as also to reiterate the working of such apex bodies through the delegates has drawn my attention to a decision of a Division Bench of this High Court in the case of Panchanan Sharma vs. The State of Bihar & Ors. reported in 1989 PLJR 437. It is an illustrative example of working of apex Cooperative Bodies in the State of Bihar. The issue in the case was election of Directors not on the basis of one member one vote but through the process of indirect election conducted through elected delegates from the district. Learned Senior Counsel to that extent seems to be correct and the stand that the notices have go to the delegates which was given in the present case is not denied by the petitioners in the writ applications. Notices were given to 129 delegates who are the members of the general meeting and 103 of them participated and adopted various resolutions including authorization of amendment to the bye-laws.

7. The claim of the petitioners is that there should be direct participative mechanism in matter of such vital importance of the apex body and all the members have a legitimate claim and their participation is needed for a healthy working of the apex body. It is essence of democracy to allow participation of the largest numbers in the process of decision making.

8. If bye-laws and the rules do not provide for the same the apex body cannot be compelled to issue notice to one or all members for participation in the general meeting. If the prevalent mechanism in terms of the bye-laws have been adopted then, in the opinion of the Court there has been no illegality in amendments to the bye-laws, which should be interfered with or be struck down as illegal, as prayed for by the petitioners. This Court does not find any illegality in the amendment to the bye-laws carried out on 26.6.2005 and duly certified under the rules by the Registrar, Cooperative Societies. This writ application is devoid of any merit and is dismissed accordingly.