
(2005) 03 PAT CK 0092

In the Patna High Court

Case No : Letters Patent Appeal No. 137 of 2005

Bihar State Co-operative Bank and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Citation : (2005) 03 PAT CK 0092

Final Decision : Allowed

Judgement

Nagendra Rai, Actg. C.J.

1. This appeal is directed against the order dated February 10, 2005 passed in CWJC No. 9436 of 2004 by which the learned single judge quashed the notice issued by the respondent-Registrar, Co-operative Societies, Government of Bihar, Patna, vide Memo No. 4054, dated July 23, 2004, to the writ petitioners-respondents to show cause why the board of directors of the Patliputra Central Co-operative Bank Ltd. (hereinafter referred to as "Patliputra Bank") be not suspended. While quashing the aforesaid notice, his Lordship went to the question of validity of the order dated July 5, 2004 passed by the managing director of the Bihar State Co-operative Bank Ltd. (hereinafter referred to as "co-operative bank") an apex bank of the Patliputra Bank, whose chairman and director are the writ petitioners-respondents before this Court directing de-affiliation of the Patliputra Bank from the apex bank and also ordering supersession of its voting rights with immediate effect, as a result of which Patliputra Bank ceased to be a member of the apex bank and was also divested of all the voting rights in the affairs relating to the apex bank and, held that as the said order has been challenged by the writ petitioners-respondents as well as by the Patliputra Bank in appeals, being case Nos. 105 and 106 of 2004, the said appeals will be disposed of by the Registrar, Co-operative Societies, Government of Bihar, Patna. However, he made certain observations about the merits of the matter also and in the meantime stayed the operation of the order dated July 5, 2004 passed by the managing director, co-operative bank till the disposal of the

appeals. He also awarded cost of Rs. 10,000 each against counsel appearing for the State and the appellant-bank.

2. The admitted fact is that the appellant co-operative bank as well as the Patliputra Bank are engaged in banking business. The appellant is the apex bank of the Patliputra Bank. They are governed by the provisions of the Bihar Co-operative Societies Act (hereinafter referred to as "the Act") being a registered society. The Reserve Bank of India is the sole note issuing authority and it regulates and controls the money supply in the country. The clearing of cheques is done by bankers clearing house, Patna, which is managed by the Reserve Bank and the membership of the clearing house shall be open to all the banks including State Co-operative Bank and such co-operative banks as may be recommended by the State Co-operative Bank in the State in which they are situated. According to the Regulations of the Reserve Bank of India, the co-operative bank has issued sub-membership to the Patliputra Bank and as such its cheques are also cleared in the clearing house.

3. The Patliputra Bank is a shareholder of the co-operative bank and the Patliputra Bank shall act as an agent of the co-operative bank. The managing director of the co-operative bank on July 5, 2004, annexure 2 to the writ application, by a reasoned order ordered for de-affiliation of the Patliputra Bank from the apex bank on the ground of certain irregularities and illegalities which are not to be dealt with here as the same are not necessary for disposal of this appeal.

4. The Patliputra Bank and its chairman and director have preferred two appeals being Case Nos. 105 and 106 of 2004 before the respondent-Registrar, Co-operative Societies, and the same are pending. It is to be mentioned here that while de-affiliating the Patliputra Bank, the managing director, co-operative bank in its order dated July 5, 2004, has also recommended for supersession of the existing board of the Patliputra Bank to the Registrar, Co-operative Societies, and request him to dissolve the board of the Patliputra Bank and conduct a fresh election as per the Act. On the basis of the said recommendation, on July 23, 2004, Registrar, Co-operative Societies, Bihar, Patna, issued a notice u/s 41 of the Act as to why the board of directors of the Patliputra Bank be not suspended. The said notice was challenged by filing the writ application by the chairman and the managing director of the Patliputra Bank before the learned single judge who has allowed the same as indicated above.

5. It is to be mentioned here that while the writ application was pending, an interim order was passed by the learned single judge staying the operation of the notice dated July 23, 2004, issued by the Registrar, Co-operative Societies and the order dated July 5, 2004 issued by the managing director of the co-operative bank against which Letters Patent Appeal No. 876 of 2004 was filed and this Court by order dated September 10, 2004, instead of interfering with the stay matter directed the learned single judge to dispose of the writ application itself. The said order was challenged before the apex court in Special Leave to Appeal

(Civil) No. 20678 of 2004 which was disposed of on November 25, 2004 and the apex court directed for early disposal of the writ application and in the meantime ordered that the interim order dated October 15, 2004, passed by the apex court shall operate subject to any modification that may be made by the learned judge.

6. In the show-cause notice, which is annexure 1 to the writ application, the Registrar, Co-operative Societies, referring to the recommendations of the managing director of the co-operative bank dated July 5, 2004 opined that from the said recommendation prima facie it is evident that (i) Patliputra Bank is violating its bye-laws (4-a(vii)); (ii) it has given loan to the Bihar State Housing Co-operative Federation without permission of the apex bank which is violation of bye laws No. 50 and (iii) inspite of availability of the resources, it has distributed less crop loan and thereafter asked the management of the Patliputra Bank to show cause as to why the board of directors be not suspended under the provision of Section 41(1) of the Act.

7. The learned single judge has quashed the aforesaid notice on the ground that the order has been passed by the Registrar, Co-operative Societies, mechanically without mentioning about his satisfaction which is in total breach of Section 41(1) of the Act.

8. Learned counsel appearing for the appellants has challenged the order passed by the learned single judge with regard to notice on the ground that the Registrar, Co-operative Societies has jurisdiction to issue notice and once he has issued the notice on being prima facie satisfied, this Court should not have interfered at this stage and should have asked the writ petitioners-respondents to file a show cause and state the points. Secondly, he submitted that the finding given by the learned single judge that the notice was issued without forming an opinion of existence of the grounds as required u/s 41(1) of the Act is not correct as at this stage, the authority has to only form a prima facie opinion, which means, the subjective satisfaction of the authority based on the materials. At the initial stage of issuance of notice, detailed inquiry or detailed finding is not required as that will amount to final adjudication affecting the rights of the parties without hearing them. Learned counsel appearing for the appellants also submitted that though the learned single judge did not quash the order dated July 5, 2004, passed by the managing director, of the co-operative bank on the ground that the appeals are pending but has made certain observations, which amounts to deciding the matter and which will prejudice the appellants at the time of disposal of the matter by the learned Registrar. He also said that counsel for the appellants and counsel for the State have submitted their points which could not appeal to the learned single judge but on that ground, the learned single judge should not have saddled them with the cost.

9. Learned counsel appearing for the writ petitioners-respondents firstly submitted that the action of the managing director, co-operative bank in issuing the order of de-affiliation by order dated July 5, 2004 is mala fide and secondly he submitted that the learned single judge was right in coming to the conclusion

that the requirements of Section 41(1) of the Act were not fulfilled.

10. As the validity of the notice dated July 23, 2004, issued by the Registrar, Co-operative Societies, u/s 41 of the Act was challenged before the learned single judge, it is useful to refer to the relevant provisions of Sub-section (1) of Section 41 of the Act as amended in 2002.

"If, in the opinion of Registrar, the managing committee of any registered society, in which the economic interest of the Government is apparently clear, is mismanaging the affairs of the registered society or is persistently making default or is negligent in the performance of the duties, imposed on it by this Act, the rules or the bye-laws, he may, after giving opportunity to the managing committee to state its objection if any and after obtaining opinion within twenty one days from the Chief Executive of the affiliating federation/society, by order in writing suspend the managing committee for a period not exceeding six months. During the period of suspension the managing committee of the registered society shall thereupon cease to function. Registrar shall appoint, any Government servant a special officer to conduct the affairs of the society and shall fix his duties and liabilities:

Provided that the suspended managing committee, if not reinstated earlier shall resume functioning immediately after six months. The period under suspension shall count towards its term."

11. From reading of the aforesaid provision it is clear that the Registrar has to form an opinion that the managing committee of any registered society is mismanaging the affairs of the registered society or is persistently making default or is negligent in the performance of the duties, imposed on it by this Act, the rules or the bye-laws, and has to give an opportunity to the managing committee to state its objection, if any, and after obtaining opinion within twenty one days from the chief executive of the affiliating federation/society may pass the order of suspension for a period not exceeding six months. In other words, the Registrar has to form an opinion about the existence of the grounds as provided u/s 41(1) of the Act and thereafter he may issue a notice inviting objection to the managing committee and decide the matter.

12. When the law requires that the authority has to form an opinion then the authorities' opinion should be subjective one based on materials. It cannot form an opinion arbitrarily and capriciously. In other words, the power is not discretionary one.

13. From perusal of annexure 1 it is clear that the Registrar in clear words said that prima facie, he is satisfied with the grounds as mentioned in Section 41(1) of the Act and before issuing notice the entire report of the managing director of the co-operative bank dated July 5, 2004, containing the materials for forming the opinion, was also before the Registrar, Co-operative Societies. Thus, it cannot be said that the Registrar, Co-operative Societies did not form an opinion on the basis of the materials placed before him.

14. It is well-settled that if there are some materials before the authority to form an opinion then its sufficiency cannot be gone at the initial stage of issuance of notice. In our view, finding given by the learned single judge that the Registrar, Co-operative Societies issued notice without forming an opinion is not sustainable in law.

15. There is another ground also to come to the conclusion that the learned single judge should not have interfered with the notice as contained in annexure 1 to the writ application. Notice was issued to the Patlipura Bank to show cause as to why the managing committee be not suspended. It is well settled that while exercising the power under article 226 of the Constitution, this Court normally or generally does not interfere in such matters unless it is shown that the notice is without jurisdiction. In the case of *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, , the Supreme Court observed in paragraph 5 as follows (page 469):

"This court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, the writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court."

16. There is no dispute that the Registrar has power to issue a notice u/s 41(1) of the Act. It is also not challenged that the grounds mentioned by the Registrar, Co-operative Societies are non-est in the eye of law. Only ground for challenge was that he did not form an opinion which, in our opinion, he formed an opinion on the basis of the materials on record. Sufficiency of the materials, as stated above, cannot be gone into. In that view of the matter, the learned single judge should not have interfered with the matter at this stage and should have directed the writ petitioners-respondents to move before the authorities to file show cause. Thereafter, the matter would have been disposed of in terms of Section 41(1) of the Act. On these grounds, the order of the learned single judge so far quashing the notice dated July 23, 2004, as contained in annexure 1 to the writ application is quashed.

17. The learned single judge also went into the validity of the order dated July 5, 2004, passed by the managing director, co-operative bank which was not even challenged before him and had made certain observations touching on the merits of the matters. In our view, when the appeals are pending before the Registrar of

the Co-operative Societies and the learned single judge has himself observed that the appeals should be disposed of, no observations should have been made touching the merits of the matter. Accordingly, any observation with regard to the merits in the pending cases by the learned single judge shall not be noticed and relied upon by the authority in finally deciding the matters.

18. Learned counsel appearing for the appellants-bank and the State submitted their points which did not find favour with the learned single judge, but on that ground, in our view, awarding a heavy cost of Rs. 10,000 each against them does not appear to be just and proper.

19. Learned counsel appearing for the writ petitioners-respondents submitted that because the order passed by the managing director of the co-operative bank is the subject-matter of appeal, the whole banking business has suffered. Taking into consideration this aspect of the matter, we are of the view that the appeals should be disposed of at an early date. Accordingly, the Registrar, Co-operative Societies is directed to dispose of the same within 15 days from the date of receipt of a copy of this order. The writ petitioners-respondents are also directed to file a show cause within one week from today before the Registrar in pursuance of notice dated July 23, 2004. Thereafter, after giving an opportunity to the other parties as well as opportunity to file a reply, the Registrar shall dispose of the suspension matter within a period of two weeks from the date of filing of the show cause by the writ petitioners-respondents.

20. In the result, the order of the learned single judge dated February 10, 2005, passed in CWJC No. 9436 of 2004 is set aside and the appeal is allowed with the aforesaid observations/directions.

S.N. Hussain J.

21. I agree.