

(1982) 11 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 125 of 1982

Board of Management, Nayagarh Co-operative Land
Development Bank Ltd. and Another

APPELLANT

Vs

Deputy Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 10-11-1982

Acts Referred:

Citation : AIR 1983 Ori 105

Hon'ble Judges : R.N. Misra, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : L. Rath, M.K. Mallik, B.D. Baug and R. Behera, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—Petitioner No. 1 is the Board of Management of the Nayagarh Co-operative Land Development Bank Limited while petitioner No. 2 is its erstwhile President. The Board was elected on 25-11-76 and petitioner No. 2 was elected as its President on 31-8-76. Under the Bye-laws of the Bank, the term of office of a committee was 3 years or until a new committee was formed. The new committee was to be taken as constituted when after fresh election, nominations were received from Government for formation of the committee. Soon after the election was over, a defeated candidate filed Dispute Case No. 3/76-77 before the Assistant Registrar challenging the election of the committee. In a revision filed against the original order relating to stay of operation of the election, being Revision Case No. 33/76, the Registrar of Co-operative Societies passed an order on 1-9-76 staying the taking over of the management of the Bank by the petitioner-Board. The direction dated 2-9-76 ran thus:--

"In the circumstances, with a view to preventing the miscarriage of justice, I hereby pass an interlocutory order u/s 114 of the Orissa Co-operative Societies Act, 1962 staying the taking over of the management of the Nayagarh Land Development Bank by the newly constituted Board of Directors which was alleged

to have been improperly constituted, till a final decision in the matter of his petition is finally pronounced."

The order of stay remained effective till 15-9-79. The new Board, assumed office with effect from 27-9-79. The Orissa Co-operative Societies (Amendment) Ordinance, 1980 came into force with effect from 7-2-1980 and in due course, the provisions in the Ordinance became an Act. Under the Ordinance, a term of 4 years was fixed for the Board of every co-operative society and the 4 years term was to be computed with reference to the date of assumption of office. The date when the President was elected was deemed to be the date of assumption of office as per provisions in the amending Ordinance of 1981 which came into force with effect from 10-7-81. The Deputy Registrar of Co-operative Societies made an order on 30th Dec. 1981 (Annexure-5) to the following effect:--

"The term of the office of the Committee of the Nayagarh Co-operative Land Development Bank Ltd. has expired in pursuance of Section 28 (i-b) of the Orissa Co-operative Societies Act. 1962 as amended by Section 2 of the Orissa Co-operative Societies (Amendment) Ordinance, 1981 (Orissa Ordinance No. 4 of 1981;

And, whereas on the expiration of the term of office of the Management of the aforesaid Bank has vested in me, therefore, I, Shri G.S. Mohanty, Deputy Registrar, Co-operative Societies, Bhubaneswar Division, Bhubaneswar, do hereby, in exercise of the powers conferred on me under the aforesaid sections, authorise Shri G. Satyanarayan Rao, Sub-Assistant Registrar of Cooperative Societies, Nayagarh Circle, to manage the affairs of the Nayagarh Cooperative Land Development Bank Ltd. until further orders."

The petitioners have asked for quashing of this order as being contrary to law.

2. The opposite party, Deputy Registrar of Co-operative Societies, has filed a counter affidavit supporting his order. Reliance has been placed on the Explanation added to Sub-section (1-a) of Section 28 of the Amending Act of 1981 where it has been said:--

"The date of election of the President shall be deemed to be the date of assumption of office by the Committee."

Admittedly, petitioner No. 2 was elected as President on 31-8-76. Though there is no dispute about the period of stay of the operation of the election and actually the new Board and, the President came into office on 27-9-79 after the vacation of the order of stay, it has been contended that the petitioner-Board cannot continue in office till 27-9-83 and the 4 years" period must be taken to have been over with effect from 30-8-80.

3. Admittedly, the new Board came into office on 27-9-79 as it had been kept out of office under an order of the Registrar staying the operation of the election. The Explanation in Section 28 (i-a) of the Act introduced by amendment refers to normal course of events and; provides the manner of computation of the period

with reference to entering into office. To apply the Explanation to a case of this type is bound to create both confusion and hardship. There may be instances where the order of stay might cover the entire term of 4 years during which the newly elected Board may not at all be in office. It could not have been the intention of the legislature in providing the Explanation referred to above to take away the right of the elected body to be in office and the term to expire even though not for a single day the elected Board, would have been in office. The Explanation, to our mind, applies to cases where the elected body is put into office and the period is to run from the date indicated in the Explanation. The purport of the Explanation is to legislatively indicate the time for computation of the period of 4 years which is the statutory term fixed by amendment. It cannot cover cases where the elected body would, be kept out of office under orders of the court. It is a well settled proposition of law that injunction or stay granted by a, court pending litigation would not take away the right of a party and in case of ultimate success, the successful party is entitled to the benefits. There may be instances where the right would be up to a particular date; for instance, a lease would be for a term of 5 years beginning from one date and ending with another. When the term expires, the lessee's rights automatically terminate. The fact that there had, been injunction for a period during the term would not bring about an extension. Take also, for instance, the case of an elected Member to the legislature. If on account of an election dispute, he be restrained from functioning, that does not entitle him to an additional period over and above the term of the legislature to which he is elected. With the lapse of time, the House dissolves and that dissolution brings about an end to membership.

The provision here is, however, different. This is not a case where the term of office is fixed by dates, nor is it in pari materie with the provisions regarding terms of the legislature. The elected body here is to remain in office for a period of 4 years. The legislature clearly intends that the newly elected body is to function and the calculation in the Explanation is from the angle of vision of the functional approach. Where there is an order of stay arising out of a dispute and the successful Board is kept out of office, that period cannot be taken into account. In the instant case particularly, the Board never entered, into office until the order of stay was vacated in 1979. To allow the period to run prior to that date would not be at all appropriate.

4. We would accordingly allow the application, set aside the order in Annexure 5 and direct that the petitioner-Board with petitioner No. 2 as its President shall remain in office until a term of 4 years expires with effect from 27-9-79, subject to other provisions of the Act.

5. There would be no order for costs.

Patnaik, J.

I agree.