

(2009) 11 PAT CK 0001
In the Patna High Court

Botari Mukhiya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Citation : (2009) 11 PAT CK 0001

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner, State and the counsel for the Tardih Block Fisherman Self Supporting Co-operative Society Limited (hereinafter referred to as the "Society").

2. Petitioner is the member of the Society, Respondent No. 3. He is aggrieved by the constitution of the Board of Directors of the Society pursuant to elections conducted in the general body meeting of the Society held on 25.11.2007, as is evident from letter dated 27.11.2007, Annexure-2. It is submitted on behalf of the petitioner that earlier the Board of Directors of the Society were elected in the general body meeting held on 01.10.2003 for the period of five years between 06.11.2003 till 05.11.2008 which is evident from Annexures 1 and 2 both and according to the petitioner the elections of the Board of Directors of the Society held in the general body meeting of the Society held on 25.11.2007 is contrary to the provisions contained in Sub-clause (2) of Clause 27 of the bye-laws of the Society which requires the election of the Board of Directors of the Society to be held at least 15 days before the expiry of the term of the Board of Directors. In the present case the term was to expire on 05.11.2008 but the elections were conducted on 25. 11.2007 i.e. a little less than one year of the expiry of the term of the Board of Directors on 5.11.2008. According to the petitioner the election of the Board of Directors of the Society held on 25.11.2007, little less than one year before the expiry of the term on 05.11.2008 has created an anomalous situation as the (sic) having been elected on 25.11.2007 come into office on 06.11.2008 after expiry of the term of the earlier Board of Directors constituted on 01.10.2003. Such situation is never

contemplated u/s 29 of the Bihar Self Supporting Co-operative Societies Act (hereinafter referred to as the "Act"). In view of the fact that the elections were conducted on 25.11.2007, little less than one year before the expiry of the term on 05.11.2008 this Court should hold that the election held on 25.11.2007 was only an eye wash and direct that the Society members should first elect an ad hoc Board in terms of the provisions contained in Sub-section (7) of Section 29 of the Act and thereafter hold another general body meeting within a period of three months, as provided in Sub-section (8) of Section 29 of the Act and conduct the elections of the regular Board In this connection, learned Counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, and in the case of Ram Janam Sansi v. Narbadheshwar Singh and Ors. reported in 1973 4 BBCJ 130. Learned Counsel for the petitioner further pointed out that by holding the election of the Board of Directors of the Society on 25.11.2007 i.e. little less than one year before the expiry (sic) has deprived the newly enrolled members of the Society who have been inducted as members of the Society during the period between 01.04.2007 till 31.03.2008 from participating in the election as in terms of the first proviso to Sub-section (7) of Section 23 of the Act only such members of the Society are eligible to exercise the right to vote who have completed one year as a member of the Society. By advancing the date of election by little less than one year the Society has deprived the newly inducted members of the Society who have not completed one year as a member of the Society from exercising the right to vote.

3. Counsel for the Private Respondent No. 4 has opposed the prayer made in the writ application and has submitted that the date of election was advanced as per the resolution of the general body of the Society and by advancing the date of election the provisions of Section 29 of the Act has not been violated which inter alia inundates that the conduct of election to the Board of the Society shall be the responsibility of the incumbent Board and election shall be conducted in the manner specified in the bye-laws before expiry of the term of the office of the out going Board of Directors. Sub-clause (2) of Clause (27) of the bye-laws of the Society provides that (sic) the expiry of the term of office of the incumbent Board of Directors and according to learned Counsel for Respondent No. 4 Sub-clause (2) of Clause (27) of the bye-laws does not restrict the discretion of the Society to hold elections even earlier than what is provided in the bye laws. Learned Counsel for Respondent No. 4 in this connection pointed out that a general body meeting of the Society was held on 25.07.2007 in which 275 members of the Society attended the meeting and passed resolution entrusting the Board of Directors to fix the date of next election as per their convenience. The Board of Directors in compliance of the resolution of the general body in their meeting dated 22.10.2007 resolved to hold the elections on 25.11.2007 and appointed Sri Shivji Mukhiya as the Election Officer. Elections were thereafter notified and the general body meeting of the Society was held on 25.11.2007 in which 215 members of the Society participated in voting and the Board was

elected. The proceedings of the general body meeting dated 25.07.2007 and 25.11.2007 have been annexed as Annexures-J and K to the counter affidavit. In this connection it is further pointed out that as on the date of election the remainder of the five year term of the earlier Board of Directors was subsisting the newly elected (sic) the earlier Board of Directors. Learned Counsel for Respondent No. 4 has further refuted the submission of the learned Counsel for the petitioner that by holding the election on 25.11.2007 the Society has deprived the members of the Society who have been inducted during the period between 01.04.2007 and 31.03.2008 from exercising the right to vote in terms of first proviso to Sub-section (7) of Section 23 of the Act which inter alia mandates that before exercising the right to vote the member must continue for at least a period of one year in the Society stating that none was inducted as member of the Society between the period 01.04.2007 and 31.03.2008, as such, the submission is "wholly misconceived and further pointed out that in the election held on 25.11.2007 the members inducted in the Society until 05.04.2006 were allowed to participate in the elections as there was none who has been inducted as member of the Society after 05.04.2006 and submitted that none of the members of the Society were deprived of their right to vote in the election held on 25-11-2007.

4. Having heard counsel for the petitioner and Respondent No. 4, I am of the view that in terms of the provisions contained in Section 29 of the Act the conduct of elections to the office of the Board of Directors of the (sic) in view of Sub-clause (2) of Clause 27 of bye-laws the elections has to be conducted by the incumbent Board of Directors at least 15 days before the expiry of its term of office. Such provision of the bye-laws, however, does not restrict the discretion of the Board of Directors to hold elections even earlier but the general body of the Society while entrusting the Board of Directors to fix the date of the next election should guide the Board of Directors to fix the date of election which is at a reasonable distance from the actual date of expiry of the term of the earlier Board of Directors and not one year earlier. The newly elected Directors shall assume office on completion of the period of the outgoing Directors or the cessation, of the period the case may be in terms of the provisions contained in Sub-section (4) of Section 29 of the Act. In the instant case no interference, however, is required as the newly elected Board has already come into office in terms of the proceedings of the general body of the Society dated 25.07.2007 and elections held on 25.11.2007, Annexures, J and K to the counter affidavit which was subject matter of Dispute Case No. 21 of 2008 before the Co-operative Tribunal at the instance of Musharu Mukhiya and the Tribunal having heard Musharu Mukhiya, another member of the Society, dismissed (sic) 06.01.2009 against which Musharu Mukhiya has approached this Court by filing M.A. No. 155 of 2009 which is pending. If the petitioner was also aggrieved by the aforesaid election, he should have approached the Tribunal at the appropriate time. Now when the Tribunal is not functioning as it has not yet been reconstituted by the State Government, petitioner has approached this Court on

23.06.2009. In the circumstances, I am not inclined to go into the correctness or otherwise of the plea that all the family members of Baidyanath Mukhiya, the Chairman of the Board of Directors have been inducted as the members of the Board of Directors. While dismissing the writ petition, I direct the State Government to reconstitute the Tribunal at the earliest, in any case within a period of three months from the date of receipt/production of a copy of this order before the Secretary, Co-operative Department.