
(1980) 01 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No. 2967 and 3268 of 1979

Brijesh Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 213

Citation : (1981) 29 BLJR 588 : (1998) PLJR 137 : (1982) PLJR 137

Hon'ble Judges : S. Sarwar Ali, J;Brishketu Saran Sinha, J

Bench : Division Bench

Judgement

Brishketu Saran Sinha, J.—As in both these writ applications the same notification and the same provisions of law are challenged, they have, by the consent of parties, been heard together and this judgment will govern both of them.

2. Nandan Co-operative Development and Cane Marketing Union Limited, Lauriya (hereinafter referred to as the Cane Union) is incorporated under the Bihar and Orissa Co-operative Societies Act, 1935, (for brevity hereafter called the Co-operative Societies Act), as a Co-operative Society. The Cane Union carries on the business of Co-operative Development and Cane Marketing with regard to the reserved area of S.K.G. Sugar Mills Limited, Lauriya. This Cane Union is a Central Society of which the members are 15 primary societies. The management is vested, in accordance with the laws, rules and bye-laws applicable, to a Managing Committee.

3. By a notification dated 20th September, 1979, and bearing No. S. O. 1468 of the Department of Co-operation, the Managing Committee of the Cane Union has been dissolved and the Anchal Adhikari, Lauriya (respondent No. 4) has been appointed its Administrator and Shri Enayat Hussain (respondent No. 5) as the Assistant Administrator, to carry on the administration for a period of six months. A copy of this notification is annexure 6, appended to C.W.J.C. 3268 of 1979 and annexure 2 in C.W.J.C. 2967 of 1979. The validity of this notification as well as

Ordinance No, 114 of 1979 engrafting Sections 41 (6), (7), (8), (9) and (30) after Section 41(5) of the Cooperative Societies Act, copy of which is annexure 4 in C.W.J.C. 3268 of 1979 as also the amending Ordinance No. 163 of 1979, copy of which is annexure 5 in the same writ application, have been challenged.

4. In C.W.J.C. 3268 of 1979 the petitioner is a member of the dissolved Managing Committee of the Cane Union and in C.W.J.C. 2967 the petitioners are its Joint Secretary and the Cane Union itself through its Joint Secretary.

5. According to the petitioners there has been no adverse remark so far by the auditors against the Cane Union and it has throughout been classified as an A class society by the auditors. It has been making profits throughout as are disclosed from its audit reports for the last eleven years.

6. The Governor of Bihar, in the year 1976, issued Ordinance No. 214 of 1976 in which, apart from others, similar provisions were made as in Ordinance No. 114 of 1979 by which Sub-sections (6), (7), (8) and (9) were inserted in Section 41 of the Co-operative Societies Act which was again re-promulgated as Ordinance No. 206 of 1977. The Bihar Legislature considered the question of amending the Co-operative Societies Act 1935, and on 19th December, 1977, the Legislative Assembly of Bihar passed a bill which did not contain the aforesaid Sub-sections and the bill is now pending consideration before the Bihar Legislative Council. It is said that notwithstanding the fact that the Bihar Legislative Assembly refused to enact the aforesaid provisions, the impugned Ordinance has kept the aforesaid Sub-sections intact and thereafter, by Ordinance No. 163 of 1979 the period for which such a dissolution, as is provided under those Sub-sections, has been increased from three to five years. It has been stated that in this view of the matter the Ordinance is an executive action of the Government which is a fraud on the Constitution. It has also been stated that the dissolution of the Managing Committee under the aforesaid provisions is a violation of the fundamental rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution which is not justified.

7. In C.W.J. C. 3268 of 1979 it has been specifically asserted that the Registrar, Co-operative Societies, had not made any report to the State Government for taking action u/s 41(6) of the Co-operative Societies Act and the statement to that extent in the impugned notification is baseless. It has further been stated that when the Secretary of the Cane Union approached the Secretary, Department of Co-operation, Government of Bihar, for a copy of the report, it was not given to him.

8. In support of the application (C.W.J.C. 3268 of 1979) Mr. Tara Kant Jha submitted that Section 41(6), as incorporated into the Co-operative Societies Act, 1935, by Ordinance No. 114 of 1979, was in violation of the fundamental right guaranteed under Article 19(1)(c) of the Constitution. Learned Counsel further submitted that the freedom to form associations or union could only be restricted to the extent provided under Article 19(4) of the Constitution and as

the restrictions imposed by Section 41(6) of the Cooperative Societies Act was not a law in the interest of the sovereignty and integrity of India or public order or morality, the impugned provision could not be sustained. At this stage it would be convenient to refer to Section 41(6) as engrafted by Ordinance No. 114 of 1979 which reads thus:

(6). If on receipt of a report from the Registrar, the State Government is of opinion that immediate dissolution of the Managing Committee of a Co-operative Society is essential in the interest of such Society or the Cooperative movement in general or in order to prevent any apprehended mismanagement of a Society, then notwithstanding anything to the contrary contained in any other provision of this Act or any rule or by law made thereunder, the State Government may, without giving to such Committee any notice, by notification in the official Gazette dissolve such Managing Committee, the member of which including the Chairman and other office bearers thereof shall forthwith vacate their offices, and the State Government shall appoint one or more Administrators to manage the affairs of such Society for such period not exceeding six months at a time as may be specified in the order and may also by like order extend the period, so, however, that the total period of dissolution shall not exceed three years.

Provided that no such step towards immediate dissolution of any Central Co-operative Bank or Bihar Raj Bhumi Bikas Sahkari Adhikosh Limited or Bihar State Co-operative Bank shall be taken by the State Government without consultation with the Reserve Bank.

It is submitted that this provision provides for dissolution of the Managing Committee in three circumstances; namely, (1) in the interest of the Society itself; (ii) the Co-operative movement in general or (iii) to prevent any apprehended mismanagement of a Society. As none of these circumstances can be said to be in the interest of public order or morality as understood in law, or in the interest of the sovereignty and integrity of India these restrictions must be struck down as being unreasonable. This submission cannot be sustained.

9, Article 19(1)(c) of the Constitution provides a citizen with the right to form associations or unions. By the impugned provision the union or association which has been formed is not being dissolved. Secondly, the right to form an association by its member does not confer a right on them to claim under Article 19(1)(c) that the activities of the association must also be permitted to be carried on in the manner desired by the members. Mr. Jha, in support of his submission, has relied upon the decision of the Supreme Court in the case of Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, . In the aforesaid case, by the Hindi Sahitya Sammelan Act, 1962, certain changes were brought about in an association which was called the Hindi Sahitya Sammelan and which was a Body Corporate, registered under the Societies Registration Act, 1860, with head office at Allahabad. By this Act new members were made in the association and in that view of the matter it was held that altering the composition of the association compulsorily would be a breach of the right to

form an association. However, in that very case it was pointed out by Bhargava. J speaking for the Court, that it has been held by the Supreme Court that after an association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desired. In the instant case, it is obvious that by Section 41(6) there will be no alteration in the composition of the association. All that is provided therein is that in the circumstances enumerated, the management for a specified period will be taken over by the Government from the Managing Committee.

10. It was next contended that the provision is arbitrary and discriminatory. It was submitted that the discrimination, as is made in cases covered by Section 41(1) and Section 41(6), is violative of Article 14 of the Constitution. Section 41(1) provides that if in the opinion of the Registrar, the Managing Committee of any registered Society is mismanaging the affairs of the Society, he may, by an order in writing, after giving the Managing Committee an opportunity to state its objections, if any, dissolve (for any period not exceeding six months) the Managing Committee and order that all or any of its members shall be disqualified from being elected to the Managing Committee of the Society for a period to be specified in the order, not exceeding three years. Sub-section (2) of Section 41 provides for the carrying on of the business of the Society during the period of the dissolution of the Managing Committee and Sub-section (5) provides for an appeal to the State Government from an order of the Registrar under Sub-section (1), it is submitted that where there has been a mismanagement of the affairs of the Society, the Managing Committee can only be dissolved after giving it an opportunity to be heard and even if, thereafter, the Managing Committee is dissolved, it has a right to go up in appeal. But under Sub-section (6), when there is only an apprehension of mis-management, then on a report by the Registrar, the State Government can, without giving any notice to such committee, dissolve the Managing Committee by a notification in the official Gazette. It has been contended that this discrimination is unjustified and confers an arbitrary power on the State Government. In other words, the submission is that Section 41(6) not only violates Article 14 of the Constitution but is also violative of the principles of natural justice.

11. While Sub-section (1) of Section 41 deals with a case where the affairs of the Society are already mismanaged, Sub-section (6) provides for three distinct class of cases which are, as pointed out above, in the interest of the Society, or the Co-operative movement in general or in order to prevent any apprehended mismanagement. Under Sub-section (1) when there has already been mismanagement of the affairs of the Society, the Registrar can act but under Sub-section (6) the attempt is to stop an apprehended mismanagement. It is obvious, therefore, that in cases of apprehended mismanagement the authority concerned has got to act quicker and further, Sub-section (6) provides for the safeguard that the action contemplated will not be taken by the Registrar but on his report, by the State Government itself. I am, therefore, inclined to take the

view that the two provisions take into account different circumstances and it cannot be said that there is discrimination. The decision of the Supreme Court in the case of Ram Dial and Others Vs. The State of Punjab, does not support the submission of the petitioners, because in that case it was held that Section 14(c) of the Punjab Municipalities Act also covered all the cases which were provided for u/s 16(1) clauses (a) to (g) of the Act and so the State Government may either take action u/s 16(1) in which it will have to give a notice to the member concerned or, on the other hand, may choose to act u/s 14(e) in which case no notice need to be given. This, obviously, was discriminatory and hence Section 14(e) was struck down as being hit by Article 14 of the Constitution. I have already pointed out that in the cases before us, the two provisions take into account different class of circumstances.

12. The twin pillars of natural justice are impartiality and fairness and both are separate concepts governed by separate considerations. Natural Justice, as pointed out by Lord Morris of Borth-y-Gest in the case of *Wiseman and Anr. v. Borneman and Ors.* 1971 App. Cas. 297. is only "fair play in action" in which Judges do not wait for directions from Parliament as they are to be found in "the justice of the common law". The law on the point has been, if I may say so with respect, exhaustively and lucidly dealt with in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, by Bhagwati, J. It has been pointed out that natural justice, having a great humanising principle intended to invest law with fairness and to secure justice has its importance in the field of administrative law as well and in applying the principles of natural justice no distinction can be made between quasi-judicial functions and the administrative functions as the object of both is to arrive at a just decision and to prevent miscarriage of justice. It was observed at page 627 that "the net effect of these and other decisions was that the duty to act judicially need not be super-added but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted." It has been concluded that the law is well-settled that even in administrative proceedings which involve civil consequences, the doctrine of natural justice must be held to be applicable.

13. Applying the above principle to the present case I am inclined to take the view that to meet the situations as are provided in Sub-section (6) of Section 41, while it is open to the State Government to dissolve the Managing Committee forthwith and appoint an administrator to manage the affairs of the Society, the words "without giving to such Committee any notice" must only refer to the time when the notification in the Gazette dissolving the Managing Committee is made. There can be no doubt that in the circumstances enumerated there, the Government might have to act quickly and if it has so to do, its purpose would be frustrated if it passes an order only after giving an opportunity to the Managing Committee to be heard. It must, however, also be borne in mind that if the Managing Committee is never afforded an opportunity to be heard, then it would

be clothing the authority concerned with the power which would be violative of the principles of natural justice and fair play in action and might lead to arbitrary action. In coming to this conclusion I have borne in mind the observations of Lord Wilberforce (1970) AER 558 that where statutory words are capable of two meanings, preference should be given to that meaning which produces the more reasonable and just result. Shah, J. also in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, observed as follows:

The Court will interpret a Statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law maker intending injustice and unreason.

In Smt. Menaka Gandhi's cases (supra) Kailasam, J. also quoted with approval the observation of Byles, J. that although there are no positive words in the Statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Krishna Iyer, J. quoted with approval the following observation of Lord Upjohn in *Fernando* 1967 2 App Cas 337:

While great urgency may rightly limit such opportunity timeously, perhaps severally, there can never be a denial of that opportunity if the principles of natural justice are applicable." It is untenable heresy, in our view, to lockjaw the victim or act behind his back by tempting invocation or urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best.

His Lordship further observed at page 876;

If all that is not possible as in the case of a fleeing person whose passport has" to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible.

Therefore, I am inclined to the view that as under the exigencies as provided for under Sub-section (6) of Section 41 immediate remedial measures may be necessary, the State Government may, without giving to the Managing Committee any notice, dissolve it, but shall immediately thereafter, give an opportunity to the Managing Committee to show cause against the decision.

14. In the view that I have taken and the interpretation that I have taken of Section 41(6) of the Co-operative Societies Act, it cannot be said that it is either arbitrary, discriminatory or violative of the principles of natural justice,

15. I have already said above that in C.W.J.C. 3268 of 1979 the assertion in the

writ petition is that although the Secretary of the Cane Union requested respondent No. 2, Secretary to the Government, Department of Cooperation, the report of the Registrar was not given. No counter affidavit has been filed on behalf of the respondent State and as such the aforesaid assertion remains uncontroverted. I would, therefore, in accordance with the construction that I have put on Section 41(6) of the Co-operative Societies Act, direct the respondents concerned to serve a copy of the reasons, for taking action u/s 41(6) on the Managing Committee within two weeks from today to enable it to show cause against the decision within two weeks thereafter. The authorities concerned will, on a consideration of it, pass necessary order within a month of the receipt of the show cause and communicate it to the Managing Committee. By adopting such a procedure the wholesome power of a dispassionate judicial examination of executive order will not be set at naught by an obdurate determination to suppress the reasons.

16. In the impugned notification (copy of which is annexure 6 in 1979 C.W.J.C. 3268 it is stated that action u/s 41(6) has been taken as the State Government was satisfied on the basis of a report of the Registrar Co-operative Societies, that the Managing Committee of the Cane Union is not managing its affairs properly and immediate dissolution of the Managing Committee was essential "in order to prevent apprehended mismanagement and in the interest of Co-operative movement in general and the Cane Union in particular." There is an averment, to which reference has already been made, in C.W.J.C. 3268 that the Registrar, Co-operative Societies, had not made any report to the State Government for taking action u/s 41(6) which is again uncontroverted. However, learned Government Pleader IV has produced the relevant file for our perusal. We have gone through it and I find that the Deputy Registrar, Co-operative submitted a report to the Additional Registrar against the Cane Union. The Additional Registrar along with his own report, submitted to the Registrar, the report of the Deputy Registrar as well. The Registrar, Co-operative Societies, has signed below the report of the Additional Registrar and endorsed the file to the Secretary of the Department. The Secretary, in his turn, on a consideration of the reports recommended action u/s 41(6) of the Act which was approved by the Minister concerned. Therefore, it cannot be said that there was no report by the Registrar inasmuch as by putting his initial below the report of the Additional Registrar, it must be presumed that the report of the Additional Registrar at least was the report of the Registrar to the Government. Therefore, it cannot be said that Government had acted without a report from the Registrar.

17. With regard to the Ordinance itself another argument advanced on behalf of the petitioners was that as the Bihar Legislative Assembly had not approved of this provision in sending the amending bill with regard to the Co-operative Societies Act to the Bihar Legislative Council the Governor, by the Ordinance, could not promulgate this provision. Merely because the Legislature, at one point of time has not approved of particular measure as a piece of legislation, the subsequent law making authority cannot be said to be bound by it. The Governor,

while promulgating an Ordinance, exercises the legislative function of the Legislature as provided under Article" 213 of the Constitution. The validity of an otherwise valid provision engrafted in the Ordinance cannot be questioned on the ground that earlier the Legislative Assembly had not approved it. Disapproval, if any, must be either by the Legislature.

18. I shall, now, refer to a submission made on behalf of respondent No. 5 that the petitions were not maintainable as the members of the Cane Union are Cane Growers Co-operative Societies and not the petitioners. In the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, in dealing with cases of locus standi in an application for certiorari Sarkaria, J., speaking for the Court, pointed out that an application may fall in any of the three categories, namely, (i) person aggrieved, (ii) stranger and (iii) busy body or meddlesome interloper. Persons in the last category, it was pointed out, are easily distinguishable as they interfere with things which do not concern them and they masquerade as crusaders for justice. No application can be maintainable at their instance. To distinguish persons aggrieved from strangers, it was pointed out the tests would vary according to the circumstances of each but some of the tests are whether the applicant is a person whose legal right has been infringed or has he suffered a legal wrong or injury in the sense that his interest recognised by law has been prejudicially and directly affected by the act or omission of the authority complained of. It is obvious that in the instant case, because of the notification in pursuance of the powers conferred u/s 41(6) of the Co-operative Societies Act, the legal rights of the petitioners to manage the affairs of the Societies has been infringed by the act of the authority concerned. In that view, it cannot be said that the petitioners have no locus standi to maintain these applications.

19. In the result, the writ applications are disposed of with the direction as given above. In the circumstances of the case, I would make no order as to costs.