

(2009) 11 PAT CK 0053

In the Patna High Court

Case No : CWJC No's. 15024 and 15218 of 2009

Dipak Kumar Jha and Ranjit Kumar Jha

APPELLANT

Vs

The State of Bihar and Others
 Anand Kumar Gupta Vs
The Bihar State Election Authority

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 3

Bihar Co-operative Societies Rules, 1959 — Rule 21B, 21C, 21D, 21E, 21F

Citation : (2009) 4 PLJR 1042

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Sachchidanand Choudhary No. 2, Manan Kr Mishra and Awanish Kr. Pandey, Sanjeev Kr. Singh, for the Appellant; Aditya Nath Jha, Amaresh Kr., K.B. Nath, S.C. Jha, K.K. Jha and Amish Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—In all the 3 writ petitions, the principal challenge is to the decision of the State Election Authority as constituted u/s 3 of the Bihar Cooperative Societies Act, 1935 read with Rule 21Y of the Bihar Cooperative Societies Rules, 1959 being contained in Memo No. 99, Bettiah dated 10.10.2009. The said has been issued under the signature of the Deputy Secretary of the Authority, copies whereof have been marked to all Block Development Officers -cum- Election Officers and the District Cooperative Officer -cum- Deputy District Election Officer. By this decision, it has been pointed out that as per Rules, the Coram of the Managing Committee is 7. It further states that minimum 6 members are required to be elected to the Managing Committee to constitute the Committee. It further points out that where 6 or more members are not elected to the Managing Committee then the elections have to be reheld for all the posts. That is the bone of contention in the present case.

2. In all the three cases which relate to Primary Agriculture Credit Societies

(PACS) who are duly registered under the Bihar Cooperative Societies Act, 1935 and the Rules framed thereunder being the Bihar Cooperative Societies Rules, 1959 and are governed by the bye laws of the Primary Agriculture Credit Societies Limited, Shri K.B. Nath, learned Senior Counsel appeared on behalf of the State Election Authority and advanced detailed arguments in support of the said decision. In the three writ petitions, petitioners are the Chairman and some of the members elected to the Managing Committees of respective PACS either contested or without contest. In all the three PACS, with which the three writ petitions are involved, the total number of members including the Chairman who were elected is less than 6. Consequently, to the decision of the State Election Authority, as indicated above, all elections even though duly held and petitioners duly declared elected, have been rendered null and void and the entire exercise is to be performed all over again. That is what has brought the petitioners to this Court. Parties have agreed to argue the matter. As it is pure questions of law involving no facts, parties were heard and with their consent, the writ petitions are being disposed of at this stage itself.

3. The contention of the State Election Authority is by virtue of provisions of bye law 25 read with Rule 22(2) and in particular its proviso would indicate that if less than 50% of the strength of the Managing Committee is only elected then the entire election process has to be undergone again including elections for the post for which elections were duly held and members elected. In other words, if in an election, the Chairman was duly elected and declared so, his election would become void if the total number of elected members to the Managing Committee remains short of 50%. On the other hand, learned Counsel for the petitioners have relied on Rule 21P and in particular Sub-rule (2) thereof, proviso to which has already been deleted. It is submitted on behalf of petitioners that on a harmonious reading of provisions of Rule 21P(2) with Rule 22 alongwith bye law 25 would clearly show that in case vacancy remaining because of either lack of nomination or because of no member being elected, such vacancy would be filled up by co-option from amongst the members of the Cooperative subject to the condition that if the vacancy is of a particular nature, the co-opted member would belong to the same category. For example, if vacancy is of a seat in the Managing Committee reserved for ladies then the co-option would be from amongst the lady members of the Cooperative.

4. Having heard the parties at length and considered the matter, in my view, the writ petition must succeed. The impugned circular of the State Election Authority apparently has no legal basis in effect. It throttles the very concept of cooperative democracy. It runs counter to the statutory provisions on a complete misreading and misapprehension of legal provisions. First one must refer to Rule 21P(1) and (2) which is as under:

21P (1) Where the number of valid nominations for any seat does not exceed the number of seats to be filled, the candidates for whom valid nominations have been received shall be deemed to have been duly elected to fill such seat.

(2) If no valid nominations are received for any one or more seats, such seat shall be filled by co-option from amongst the members of the society.

5. A reference to the said rule would show that where the nominations are less than the number of seats then the nominees are to be declared elected uncontested. This only means that if in the Managing Committee, two seats for ladies are reserved and the number of nominations for lady seats is two or one then as the case may be both would be declared elected uncontested. Election would only take place if there are more than 2 nominations in this category. Now we come to Sub-rule (2) of Rule 21P. This sub rule in clear terms state that if no valid nominations for anyone or more seats, such seats shall be filled from co-option amongst the members of the Cooperative Society. Thus rule, being subordinate legislation, the Legislature clearly contemplated how such vacancies occurring because of no election have to be filled up. They have provided for the mode of such filling up. Next we come to Rule 22 which is as follows:

22. (1) Subject to nominations by the State Government and/or the Registrar of such number of members to the Managing Committee as prescribed in this Act, Rules and Bye-laws of a registered society, the Managing Committee of the society shall be constituted:

Provided that the election of the members of the Managing Committee and office-bearers thereof shall be held in accordance with the procedure laid down in Rule 21B to 21X.

(2) the members of the Managing Committee and the office-bearers shall be deemed to have taken over charge immediately after the constitution of the Managing Committee:

Provided that the Constitution of the Managing Committee shall not be treated as complete unless and until the elected members together with the ex-officio members, if any, constitute fifty per cent or more of the Managing Committee.

(2) The State Government or the Registrar, as the case may be, may nominate all the members of the Managing Committee and the office-bearers thereof on such terms and conditions as may have been prescribed in the bye-laws of the society.)

6. What is material here is the proviso to Sub-rule (2) of Rule 22. In my view, it does not provide, as argued on behalf of respondents and in particular on behalf of the State Election Authority, that if the total number of members in the Managing Committee is less than 50% then it would be deemed there has been no election and it would warn a fresh election for all posts. A plain simple reading of the proviso is that unless the elected members together with ex officio members do not exceed 50% then the Managing Committee so long as the position continues shall not be deemed to be constituted. In plain and simple words, the Managing Committee would not function as a Managing Committee unless the members exceed 50%. In my view, if there is any short fall then

either it has to be filled up by election to the extent of short fall or as provided in terms of Rule 21P(2) by co-option from amongst the members but certainly it does not provide for a general election all over again disqualifying even those who were elected. Now, at this stage, I may consider bye law 27 as applicable to PACS. All it provides for a meeting of the Managing Committee, the coram would be 7. It provides nothing else. Nothing can be read into it as necessitating a fresh election. If the number of members is reduced to less than 7, the fresh elections would be only for remaining vacant seats and not for seats which has already been filled up by elections.

7. Next I must consider bye law 25. On a complete reading of bye law 25, which is quite lengthy, the only thing that a person can gather is that consistent with the provisions of Rule 21P(2), it also provides the same very thing. It clearly provides that vacancies left in course of the election have to be filled up by co-option. That is stated there in so many terms. It is further stated clearly that co-option would be from the same group of persons for whom the seat is reserved. Thus, reading of the provisions of Rule 21P with Rule 22 and bye law 27 and bye law 25 harmoniously, the legislative intent is clear. Unelected vacancies have to be filled up by fresh elections and not that elected members would also lose their elections if 50% level is not achieved. I may add one important aspect. Here, a person, who is duly elected member to the Managing Committee, can be removed only on grounds which are specified in Rule 23 read with Rule 24 of the Rules and not by any fanciful decision of the State Election Authority unsupported by law. Thus, the decision of the State Election Authority ordering fresh elections in toto in event, the number of persons elected are less than 50% of the strength of Managing Committee, is neither contemplated by law nor it has any statutory sanction. The said decision is thus illegal, arbitrary and is liable to be quashed and is quashed accordingly. Consequence would be that the notification for election in respect of individual PACS would now be either made afresh or would be operative only for posts which were not filled up by the earlier election. Persons, who were declared elected in the earlier elections, would not be required to seek reelection as they suffered no disqualification.

8. Before closing, I may note one thing in respect of CWJC No. 15024 of 2009. The petitioner was elected Chairman. It has been brought to my notice by intervener who sought to appear in these writ petitions that petitioner's election was challenged by the intervener in CWJC No. 13594 of 2009 which was disposed of by order dated 03.11.2009 by this Court. It was submitted on behalf of the intervener that this Court had held that the action to hold fresh elections was consistent with proviso to Rule 22(2) and that the nomination of Dipak Kumar Jha was invalid. I have gone through the said order which was passed by this Court itself. The facts were that once the said writ petition was filed challenging the candidature, the election of Dipak Kumar Jha as Chairman uncontested, State restricted and announced a reelection as sufficient number of members have not been elected. The writ petitioner therein chose to accept the action of the State and did not choose to challenge the action of the State and, thus, did

not press the writ application any further as the election of Dipak Kumar Jha consequent to the directions of the State Election Authority has been set aside. Thus, this Court neither decided upon the validity of the direction of the State Election Authority nor the validity or invalidity of nomination of Dipak Kumar Jha upon fresh notification being issued amongst the parties. It was accepted as fate accompli necessitating no decision. There being no decision that order passed therein, cannot come in way of Dipak Kumar Jha in challenging independently the action taken by the State Government.

9. For the foregoing reasons, the three writ petitions are allowed. So far as petitioners are concerned, there will be no election for a post on which they have been elected. Any person aggrieved by their election may take such remedy, as may be available to them.