
(2015) 08 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10588 of 2015

Gulab Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 08 PAT CK 0019

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Pashupati Prasad Sinha and Deepak Kumar, for the Appellant; Raisul Haque, SC and Binay Kumar, A.C. to SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J—Heard Mr. Pashupati Prasad Sinha, learned counsel appearing for the writ petitioners, learned counsel for the State, Mr. Yogendra Mishra for the respondent No. 8 and Mr. Shankar Kumar Thakur for the respondent No. 7.

2. The petitioners are aggrieved by the order dated 21.5.2015/04.6.2015 passed by the Registrar, Co-operative Society in Miscellaneous Case No. 249 of 2012 whereby the expulsion of the petitioners from the Primary Membership of the Singhiya Matyasjivi Sahyog Samiti, Singhiya in the District of Samastipur taken by the Managing Committee of the Society in the meeting held on 20.10.2012 and approved by the Aam Sabha on 21.10.2012 has been affirmed and by the same order the expulsion of the respondent No. 8 from the Primary Membership of the society was held not valid. The petitioners thus while questioning the order insofar as it affirms their expulsion has also questioned the decision of the Registrar, Cooperative Society in adjudicating upon the expulsion of the private respondent which expulsion stood affirmed by the Registrar, Cooperative Society in the order passed in Miscellaneous Case No. 24 of 2013.

3. Mr. Pashupati Prasad Sinha, learned counsel appearing on behalf of the petitioners has referred to the bye laws of the Society, a copy of which is placed

at Annexure-2 to the writ petition to submit that for the reasons of not attending three consecutive meeting held on 01.7.2012, 12.7.2012 and 25.7.2012 that these petitioners were expelled vide a resolution passed on 20.10.2012 and was duly approved in the Aam Sabha held on 21.10.2012. He submits that apart from the fact that no notice was issued to the petitioners in respect of the meeting held on 01.7.2012, another aspect of the matter is that the resolution passed on 20.10.2012 lacked quorum since the private respondent No. 8 who participated in the meeting had already been expelled from the Primary Membership on 10.10.2012 itself. He thus submits that since despite expulsion, the private respondent had yet participated in the meeting, that by itself would invalidate the meeting since only six members had validly participated and of whom one Babu Kant Mukhiya has disowned his signature on the resolution passed on 20.10.2012 to institute a police case giving rise to Singhiya P.S. Case No. 20 of 2013 charging the private respondent No. 8 of forging his signature amongst other allegations. He submits that the quorum for holding any meeting is 7 as per the bye laws and since the private respondent had been expelled on 10.10.2012 itself and another member Babu Kant Mukhiya disowned his signature, the participants left were only five and which did not constitute a quorum. Another ground raised by Mr. Sinha is that the condition regarding non-participation in three consecutive meeting is by itself not sufficient for inviting an expulsion as is manifest from clause-9 and clause-28 of the bye laws of the Society. He thus submits that in the circumstances so discussed the Registrar, Co-operative Societies has completely misdirected himself in approving the expulsion of these petitioners. It is further contended that not stopping at that, the Registrar has perpetuated the illegality in reversing the expulsion of the private respondent No. 8 even while considering the case of these petitioners. With reference to an order passed by this Court in the writ petition preferred by the private respondent No. 8 bearing CWJC No. 10479 of 2013 present at Annexure-B/8 to the counter affidavit of the private respondent he submits that the private respondent did not choose to contest the order passed in Miscellaneous Case No. 24 of 2013 confirming his ouster rather he chose to get the writ petition disposed of in the light of the order passed in Miscellaneous Case No. 249 of 2012.

4. Mr. Thakur, learned counsel appearing on behalf of the respondent No. 7 while supporting the contention advanced by Mr. Sinha has submitted that he would represent the Secretary so appointed during the interregnum period and that the expulsion of the private respondent No. 8 in the circumstances was well justified.

5. The argument of Mr. Sinha has been strenuously contested by Mr. Mishra appearing for the respondent No. 8 and his entire effort revolved upon saving the order passed by the Registrar in so far as it reversed his expulsion despite the order passed in Miscellaneous Case No. 24 of 2013. According to Mr. Mishra the writ petitioners were estopped from raising any objection as regarding the opinion expressed by the Registrar in reversing the expulsion of the private respondent since they never chose to object on the disposal of the writ petition

so preferred by the private respondents in the light of the order passed in Miscellaneous Case thereby consenting to the disposal. Mr. Mishra relying on the judgment of the Supreme Court on the principle of res judicata and constructive res judicata since reported in Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others, AIR 1967 SC 591 : (1964) 2 SCR 310 , Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa, AIR 1956 SC 346 : (1956) 22 CLT 251 : (1956) 1 SCR 72 and more recent reported in Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others Vs. Vithu Hira Mahar (Dead) by LRs. and Others, AIR 2010 SC 818 : (2009) 13 JT 338 : (2009) 10 SCC 273 : (2009) 15 SCR 222 : (2009) 10 UJ 4896 has submitted that the petitioners on the principle of res judicata are estopped by their conduct in not opposing the disposal of the writ petition filed by the private respondent in the light of the order passed in Miscellaneous Case which is impugned in the writ petition. He thus submits that even when the petitioners can well question the order passed in Miscellaneous Case No. 249 of 2012 insofar as it proceeds to uphold their expulsion, they are estopped from raising any objection insofar as the relief has been granted to the private respondent.

6. I have heard learned counsel for the parties and I have perused the records. There is no dispute that the foundation of the orders of expulsion rests on non-participation of the contesting parties in the meetings held. What transpires from the proceedings is that there is a faction led by the petitioners while there is another faction led by the private respondent No. 8. Each of these factions held their meetings separately and in insofar as the meeting held by respondent No. 8 is concerned, he held the meeting on 01.7.2012, 12.7.2012 and 25.12.2012 and while holding that the writ petitioners were not cooperating and participating in the meeting that in exercise of powers vested under clause-28 of the bye laws present at Annexure-2, these petitioners were removed from membership of the society.

7. On the other hand, another expulsion order was passed against the private respondent No. 8 by the faction represented by the petitioners in the meeting held on 10.10.2012 and while charging the private respondent of not participating in the meeting held on 19.8.2012, 26.8.2012 and 29.9.2012 that order for his expulsion was passed under clause 9 of the bye laws.

8. In my opinion both the expulsion orders are bad in law, contrary to the statutory provisions of the Bihar Co-operative Societies Act and the rules framed thereunder as well as the Bye Laws of the society and the reasons are not very intricate rather are self eloquent. Insofar as the writ petitioners are concerned their expulsion was passed in the meeting held on 20.10.2012 and approved in the Aam Sabha held on 21.10.2012. I would go no further but refer to Rule 28(2) of the Bihar Co-operative Societies Rules framed under "the Act" which mandates a service of notice of meeting to the members of the society. There is absolutely no contest that although the expulsion order rests on their non participation in the meeting held on 01.7.2012, 12.7.2012 and 25.7.2012 but

there was no service of notice insofar as the meeting held on 01.7.2012 is concerned rather it was fairly admitted by Mr. Mishra that the meeting held on 01.7.2012 was by consensus. A consensual meeting participated by some of the members does not mean a notice to non-participating members. When the law prescribes a mode and manner for communicating a decision to hold meeting, the office bearers were legally bound to follow the same. Rule 28(2) of "the Rules" casts a responsibility on the Secretary to inform the members about the meeting and insofar as the meeting held on 01.7.2012 is concerned, there is no dispute that there was no notice meaning thereby of the meetings in which these petitioners have been charged of non-participating, the meeting held on 01.7.2012 was without notice. In these admitted circumstances no resolution could have been passed on 20.10.2012 against these petitioners by relying upon Clause 28 of the bye laws.

9. In view of such undisputed position, I do not deem it necessary to delve in the other points, so raised in the writ petition and for the reasons so assigned, the order of expulsion of these petitioners passed in the meeting held on 20.10.2012 as upheld in the Aam Sabha on 21.10.2012 and affirmed in the order passed in Miscellaneous Case No. 249 of 2012 cannot be upheld and is accordingly set aside.

10. This would bring this Court to the issue as to whether the order passed in Miscellaneous Case No. 249 of 2012 insofar as it reverses the expulsion of the private respondent No. 8 would require any interference. There is no dispute on the facts that the expulsion of the private respondent No. 8 was again on grounds of non-participation in the meeting held on 19.8.2012, 26.8.2012 and 29.08.2012. The essential prerequisites for passing a resolution of expulsion can be found in clause 9 of the bye laws present at Annexure-2 and stipulates three conditions for removal of a member of the Managing Committee namely:

"(a) Conscious disregard/violation of the provisions of "the Act", "the rules" and the bye laws,

(b) Being engaged in such work which in the opinion of the Managing Committee is contrary to the objects of the society;

(c) Deliberately opposing any instalment or guilty of misconduct or of violating any terms finalized between the society and a member."

11. A bare perusal of the conditions provided under clause 9 of the bye laws leaves no confusion that a charge of non-participation by a member in three consecutive meeting is not any ground for expulsion.

12. In that view of the matter, the expulsion of the private respondent No. 8 for non-participation in the three consecutive meeting was unsustainable in law and as a consequence the resolution dated 10.10.2012 so passed against the private respondent as affirmed in Miscellaneous Case No. 24 of 2013 cannot be upheld and its reversal by the Registrar while passing the order in Miscellaneous Case

No. 249 of 2012 would not warrant any interference.

13. The writ petition is allowed and in the nature of the order passed by this Court, the writ petitioners as well as the respondent No. 8 stand restored to the Primary Membership of the society.