
(1977) 12 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 2059 of 1977

Hare Krishna Updhyay

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-12-1977

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1977) 25 BLJR 457

Hon'ble Judges : K.B.N. Singh, C.J;S.S. Hasan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.B.N. Singh, C.J.—In this writ application, the petitioner has prayed for quashing the order of the Minister of Co-operation, Government of Bihar (Respondent No. 2), dated the 11th October, 1977, (Annexure "1"), and, issuance of necessary direction to the Registrar, Co-operative Societies, Bihar (Respondent No. 3), to proceed to decide the election dispute in Case No. 90 of 1977, in terms of his order dated the 6th October, 1977 (Annexure 2).

2. The short facts necessary for the disposal of this application may be stated. The petitioner, a Director of the Arrah Vyapar Mandal Sahyog Samiti, filed an application before the Registrar, Co-operative Societies, Bihar (Respondent No. 3), u/s 48 of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as "the Act"), challenging the legality of the preliminary general meeting of the Arrah Buxar Central Co-operative Bank Limited, Arrah, held on the 26th September, 1977, on various grounds, one of them and the main being that the delegate members, who attended the meeting, were defaulters and that they could not legally attend the annual general meeting scheduled to be held on the 12th October, 1977. Some of the other grounds were that the list prepared for grouping of the societies was not published nor any notice of the holding of the annual general meeting was given to the representatives and the representatives of the superseded societies were also called at the meeting.

Besides that, allegations regarding financial irregularities were also made. A prayer was also made for staying the holding of the annual general meeting scheduled to be held on the 12th October, 1977.

3. The election petition was registered as Election Dispute No. 90 of 1977, and, on the 6th October, 1977, the Registrar, Co-operative Societies, Bihar, stayed the annual general meeting scheduled to be held on the 12th October, 1977, until further orders and also directed the Joint Registrar, Cooperative Societies, to hold an enquiry and submit a report on the allegations contained in the petition of the petitioner and the show-cause filed on behalf of Respondents Nos. 4 to 6. Respondents Nos. 4 to 6 had filed a show-cause denying the allegations made in the election petition and alleging that the order of the Registrar, Co-operative Societies, Bihar, postponing the annual general meeting to be held on the 12th October, 1977, was wholly illegal, inasmuch as it would frustrate the holding of the annual general meeting within the time-limit fixed by the statutes and the Board of Directors of the Bank would stand superseded.

4. Thereafter, Respondents Nos. 4 to 6 filed an application u/s 65A of the Act, incorporated under the Bihar Co-operative Societies (Amendment) Act, 1977 (Bihar Act XXI of 1977). The Minister of Co-operation, who admittedly exercised the powers of the State Government u/s 65A, by the impugned order dated the 11th October, 1977 (Annexure1) finally disposed of the election dispute, holding that the annual general meeting should be held within the statutory period and quashed the order of the Registrar, Co-operative Societies, Bihar, for holding of the enquiry by the Joint Registrar, Co-operative Societies.

5. The petitioner has alleged in the writ application that under the provisions of Section 65A of the Act, the Minister of Co-operation, Bihar, has no jurisdiction to deal with the election dispute pending before the Registrar, Co-operative Societies which is under the exclusive domain of the Registrar.

6. A counter-affidavit has been filed on behalf of Respondents Nos. 4, 5 and 6, Arrah-Buxar Central Co-operative Bank Limited, its Executive Officer and its Board of Directors, respectively denying the assertions made in the writ application.

7. Mr. Jaya Narayan, learned Counsel appearing on behalf of the petitioner, has submitted that:

(i) The Amendment Act of 1977, which inserted Section 65A, does not purport to amend Sub-section (9) of Section 48 of the Act, which makes the order of the Registrar final and, therefore, no revision against the orders of the Registrar can lie before the State Government u/s 65A, in absence of corresponding amendment in the provisions of Section 48(9) of the Act.

(ii) Proceedings u/s 65A of the Act can only arise in certain specified matters that have been mentioned in that Section and it does not include any "election dispute", as the word "election" only has been mentioned in Section 65A and not "election dispute".

(iii) Proceedings u/s 65A of the Act are administrative in nature, and, therefore, they cannot affect or control proceedings u/s 48 of the Act, which are quasi-judicial in nature.

(iv) Section 65A of the Act is violative of Article 14 of the Constitution of India, because it gives arbitrary and unbridled power to the Government.

(v) Since no guide-line has been provided in exercise of the powers u/s 65A, and the fact that the Government has been empowered to exercise its jurisdiction under that Section at any stage of a proceeding u/s 48 of the Act, enhances the risk of its arbitrary exercise and misuse by the authorities concerned.

8. Mr. Kamalapati Singh, appearing on behalf of Respondents Nos. 4, 5 and 6, on the other hand, has submitted that the non-obstate clause in Section 65-A of the Act indicates that it has over-riding effect on the other provisions of the Act and it will be deemed to have caused the amendments or annulment of the other Sections of the Act to the extent that Section 65A becomes applicable. He has further submitted that the word "election" in Section 65A is wide enough to include "election dispute" as well. He has, however, submitted that the power u/s 65A cannot be exercised after the final order has been passed u/s 48 of the Act, but it could be exercised while the proceeding is pending before, the Registrar.

9. Learned Standing Counsel No. III has not advanced any contrary argument; suggesting that the power can be exercised after final orders of the Registrar u/s 48 of the Act.

10. It is not disputed that an election dispute of the nature as was filed before the Registrar of the Co-operative Societies, Bihar (Respondent No. 3), by the petitioner, was a dispute u/s 48 of the Act. That the Registrar has power u/s 48 of the Act to decide such a dispute, has rightly not been challenged before us by the learned Counsel for the Registrar, following causes are open to him u/s 48(2) of the Act:

(a) decide the dispute himself; or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf; or

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators.

In such of the cases where the Registrar transfers the case u/s 48(2)(b) of the Act for disposal to any person exercising the powers of the Registrar, the aggrieved party has a right of appeal under Sub-section (6) of Section 48, before the Registrar. Sub-section (9) of this section, on which much argument has been advanced, reads as follows:

(9) Save as expressly provided in this Section a decision of the Registrar under this Section and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under Clause (b) or (c) of Sub-section (2) shall be final.

11. Mr. Narayan has emphasised that for the purpose of dispute which can be referred to the Registrar u/s 48, the section lays down a complete procedure and the order passed thereunder is final and unless the provisions contained in Section 48, particularly, Sub-section (9), are suitably amended, by mere insertion of Section 65A the finality cannot be destroyed.

12. Insofar as the instant case is concerned, Mr. Narayan's argument overlooks a basic fact that the authority u/s 65A has not revised any final order of the Registrar. What seems to have been done is that the election dispute pending before the Registrar has been recalled from his file by Respondent No. 2 and disposed of. Section 65A authorises the State Government, suo motu, or on application of an aggrieved person, "to call for any record of inspection or enquiry made under this Act or Proceedings of any matter pending before the Registrar, or his subordinate or any person acting under his authority, and examine and pass such orders as it may deem fit". It is thus manifest that the State Government has been authorised to call for any proceeding of any pending matter from the file of the Registrar, as the lines underlined by us will show. In the instant case, in a pending election dispute, the Registrar has ordered an enquiry by a Joint Registrar regarding rival contentions of the parties and also stayed the holding of the annual general meeting. No final order has been passed. Finality, if any, attaches u/s 48(9) of the Act, to final orders of the Registrar on election petitions, and not to interlocutory order in an election dispute. In such a situation, without going into the controversy, whether Section 48(9) stands modified by Section 65A or not, the order of Respondent No. 2, in withdrawing the election dispute and disposing it off, is clearly covered u/s 65A of the Act. The contention of Mr. Narayan that as the expression "election" has been used in Section 65A and not the expression "election dispute", it will not entitle the Minister to call for the proceedings of the election dispute pending before the Registrar is also without substance. The expression "election" has not been defined in the Act or in the Rules. Section 48 also does not use the expression "election dispute", but refers to any dispute touching the business of a registered society, which can be subject-matter of a proceeding u/s 48 of the Act. The Chambers's Twentieth Century Dictionary (Revised Edition), defines the word "election" to mean "the act of electing or choosing; the public choice of a person for office, usually by the votes of a constituent body." Therefore, the expression "election" will also cover "election dispute", where an election has been challenged. In the same way, a dispute that can be raised u/s 48 of the Act, covers a dispute as to election, as laid down in the case of Pandit Raghav Jha v. The Registrar, Co-operative Societies, Bihar, and Ors. ILR Pat 325

13. Mr. Narayan is also not right in his submission that the proceeding u/s 65A is administrative in nature. Such power of suo motu revision or correction of an order of an inferior authority or power to do it on an application is to be found in various statutes, particularly, the statutes dealing with taxation matters. The power being clearly judicial, has to be exercised on the well established principles of exercise of such powers one of them being that an order will not be reversed

without hearing the parties likely to be affected by such orders.

14. The last contention of Mr. Narayan that this will give unbridled power to the State Government also, in our opinion, is not sustainable. Where an election proceeding is withdrawn by the State Government from the Registrar that does not absolve the State Government from following the procedure which normally is followed by the Registrar in such a dispute. Such guide-lines are provided by the Rules framed under the Act by the State Government. Such power of transfer of a proceeding is also found in the Civil Procedure Code, where superior courts or authorities have powers of calling for proceedings from the subordinate courts and to deciding the same, but the superior courts or authorities calling for the proceedings have also to follow the same procedure for the disposal of the case, which are followed by the sub-ordinate authorities. The same principle will apply where the power is exercised u/s 65A for recalling an election dispute from the Registrar by the State Government.

14. The possibility of the State Government trying to interfere in favour of a particular person, in our considered opinion, should not be the basis of declaring these provisions to be violative of Article 14 of the Constitution. Whenever such power is wrongly exercised an aggrieved party can, in appropriate cases, approach this Court for quashing such an order, if a prima facie case of mal-exercise of that power is made out. A judicial or quasi-judicial authority is expected to act fairly. As held in the case of Matajog Dobey Vs. H.C. Bhari, , "a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official."

16. Mr. Narayan has also placed reliance on the decision of this Court in the case of Din Dayal Singh Vs. The Bihar State Co-operative Marketing Union Ltd., , and submitted that if Section 56 cannot control Section 48, the same will be the position with Section 48, the same will be the position with Section 65A as well. The provisions of Section 56 are not in pan material with those of Section 65A of the Act, and section 56 has not such an over-riding effect, as Section 65A. Section 65A does nothing more than instead of the Registrar deciding the election dispute by referring to an officer subordinate to him, the State Government has been given power to recall an election dispute from the Registrar in appropriate cases. Section 48 itself puts no bar on transfer and authorises the Registrar to transfer such of the cases as he may deem fit and prayed. Similar power is being exercised u/s 65A by the State Government of recalling such election disputes from the Registrar as the State Government may consider proper. That will not amount to any discrimination under Article 14 of the Constitution, as urged by Mr. Narayan, in view of the above decision of the Supreme Court.

17. In the result, this application fails and is dismissed, but without any costs.