

(2016) 11 PAT CK 0093

In the Patna High Court

Case No : Letters Patent Appeal No. 2029 of 2015; (Arising out of Civil Writ Jurisdiction Case No. 11665 of 2015 Along with Interlocutory Application No. 9298 of 2015)

Indradeo Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 14(9), Section 41(5), Section 41(5), Section 44AT, Section 44BF(2)

Citation : (2017) AIR(Patna) 12 : (2016) 4 PLJR 903

Hon'ble Judges : Hemant Gupta, ACJ. and Mr. Ahsanuddin Amanullah, J.

Bench : Division Bench

Advocate : Mr. Rakesh Kumar Jha, Advocate, for the Appellants; Mr. Anuj Kuamr, AC to SC-7, for the State; Mr. Yogendra Mishra, Advocate, for the Respondent Nos. 5 to 10

Final Decision : Disposed Off

Judgement

Mr. Ahsanuddin Amanullah, J. - Heard learned counsel for the parties.

2. The challenge in the present intra-court appeal under Clause X of the Letter Patent of Patna High Court is to the judgment dated 17.08.2015 by which C.W.J.C. No. 11665 of 2015, filed by the appellants, has been dismissed by the learned Single Bench.

3. Consequent upon election, a Managing Committee of eleven persons was constituted for Bhaishwan Primary Agriculture Credit Society(hereinafter referred to as the "PACS"), including the appellants, on 11.11.2014. Out of them, 10 persons, including the appellants no. 2 to 6 and respondents no. 5 to 9, submitted their resignation to the Manager of the PACS on 03.12.2014. Thereafter, the respondent no. 5 filed Supersession Case No. 423 of 2014 before the Registrar, Co-operative Societies, Bihar, Patna. The case was heard and finally disposed off by order dated 22/25-05-2015 by the Additional Registrar, Co-

operative Societies, Bihar, Patna by which the Managing Committee was superseded with immediate effect with a direction to appointment an Administrator till elections were held in accordance with law.

4. Being aggrieved by the same, the appellants preferred C.W.J.C. No. 11665 of 2015, which was dismissed by the learned Single Bench by judgment dated 17.08.2015, which is the subject matter of the present Letters Patent Appeal.

5. Learned counsel for the appellants submitted that even if majority of the Members of the Managing Committee resigned, a case for supersession under Section 41(5) of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the "Act") is not made out, as the same have to be treated as casual vacancies in terms of the second proviso to Section 14(9) of the Act. Learned counsel submitted that in terms of Section 44BF(2) of the Act, supersession of the Managing Committee (Board) of a Primary Agriculture Credit Society, under Section 41 of the Act, can be done by the Registrar only under four conditions enumerated therein under sub-sections (a) to (d), which in the present case are not satisfied. He further contended that in view of appellants being 07 in number opposing the supersession of the Managing Committee, the power under Section 41(5) of the Act ought not to have been exercised. Learned counsel submitted that Section 14(9) of the Act stipulating the terms of the elected members of the Board and its office bearers being fixed for five years, the election of the remaining members, who had not tendered their resignations, could not have been curtailed. Learned counsel submitted that in view of the over-riding effect of Section 44AT of the Act, the supersession can be only under Section 44BF and not under Section 41(5) of the Act.

6. Learned counsel for the appellants relies upon a decision of the learned Single Bench of this Court in the case of Deepak Kumar Jha v. The State of Bihar 2009(4) PLJR 1042, for the proposition that even vacancy exceeding 50% in the Managing Committee, would not lead to election of the entire Managing Committee and shall be limited to the shortfall, either to be filled up by election to the extent of shortfall or by co-option from amongst the members.

7. Learned counsel for the respondents, while opposing the contentions of learned counsel of the appellants, reiterated the arguments advanced before the learned single Bench and has supported the reasoning given in the order under appeal.

8. We have heard learned counsel for the parties at length and find no merit in the present appeal. However, we would like to add our own reasoning. The issue basically is quite simple and direct; as to whether an order of dissolution of the Managing Committee, on account of resignation of more than half of the members, under Section 41(5) of the Act, is valid, being the normal consequence of such resignations. In view of the arguments advanced, the issue has to be tested on the touchstone of Sections 14(9) and 41(5) read with 44AT and 44BF(2) of the Act. The same read as under:

14. Registered societies to have a managing committee etc.- xxxxx

(9): "Notwithstanding anything contained in any provision of rules or the Bye-laws of any Co-operative Society the term of office of elected members of the Board and its Office-bearers shall be five years from the date of election and the term of Office-bearers shall be co-terminus with the term of the Board:

Provided that the Board may fill a casual vacancy on the Board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of the Board is less than half of its original term;

Provided further that if the term of the Board remains for more than half of its original term and if any vacancy arises for elected members or Office-bearers for any reason whatsoever, the Bihar State Election Authority shall fill the vacancy for remaining period by holding bye-election." xxxxx

41. Dissolution of Managing Committee.- xxxxx

(5) The Registrar may dissolve the Managing Committee of a registered society in case where-

(a) majority of the members and elected office-bearers of the managing Committee of a registered society resign from their respective membership or office; or

(b) half the total number of seats of the Managing Committee of a registered society, becomes vacant for any reason whatsoever; and shall appoint Administrator for the better management of the registered society;

Provided that if during the period of dissolution of the Managing Committee, the Registrar is satisfied that the affairs of a registered society have sufficiently improved and it is desirable to restore the management to a newly elected Managing Committee, he may by order direct that the Administrator shall take steps for the constitution of a new Managing Committee and on such Committee having been constituted in accordance with the provision of this Act and the Rules, the Administrator shall hand over the management to such newly constituted Managing Committee forthwith.

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44AT. Over-riding effect of Chapter VI-D. - Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or the Bihar Self Supporting Co-operative Societies Act 1996 or rules framed thereunder or bye-laws of any registered society or orders issued there under, the provisions of this chapter shall have overriding effect. xxxxx

44BF. Supersession of Short Term Co-operative Credit Structure. - xxxxx

(2) The supersession of the managing committee under section-41 of this Act of a Primary Agriculture Credit Society shall be done by Registrar, only under the following conditions:-

- (a) if a society incurs losses for three consecutive years, or
- (b) if serious financial irregularities or frauds have been identified, or
- (c) if there are judicial directives to this effect, or
- (d) if there is lack of quorum for three consecutive meetings."

9. The main thrust of the argument of learned counsel for the appellants was that Section 14(9) of the Act starts with a non obstante clause. However, though it starts with the word "Notwithstanding", but here lies the catch, inasmuch as, the said word is qualified only to "anything contained in any provision of rules or the bye-laws of any Co-operative Society?." Thus, it is clear that such "notwithstanding relates only to the rules and bye-laws of the Cooperative Societies but not to any other provisions contained in the Act. Therefore, there is no curtailment of the power of the Registrar, conferred under the Act, to dissolve the entire Managing Committee in terms of Section 41(5)(b), on half of the total number of seats of the Managing Committee of a registered society having become vacant for any reason whatsoever.

10. Now, coming to the issue of limitation on the power of the Registrar to supersede the Managing Committee of PACS, there is no doubt that in terms of Section 44AT, the provisions of Chapter VI-D of the Act, which covers Sections 44AT to 44BQ, shall have overriding effect on anything contrary or inconsistent contained in any other chapter of the Act and thus, the provisions of Section 44BF shall have primacy and overriding effect on anything contrary to any other provision under the Act. Admittedly, Section 44BF (2) relates to supersession of the Managing Committee under Section 41 of the Act of a PACS by the Registrar which can be only under the conditions enumerated at sub-sections (a) to (d) of Section 44BF(2).

11. Here also, there is no contradiction with regard to supersession of the Managing Committee of the PACS in question, in the facts and circumstances of the present case, Section 44BF(2) itself speaks of supersession of the Managing Committee under Section 41 of the Act and further under the conditions enumerated, sub-section (d) of Section 44BF(2) of the Act speaks of there being "lack of quorum for three consecutive meetings". Thus, there is no ambiguity that supersession has to be under 41 of the Act, though with regard to the Managing Committee of PACS, it can be only on the grounds enumerated in Section 44BF(2) of the Act.

12. In the instant case, the resignation of the majority of the members of the Managing Committee, it is, but obvious, that there shall be lack of quorum at every meeting and not only in the three consecutive meetings. The satisfaction of the condition mentioned at 44BF(2) (d) of the Act is a foregone conclusion and an admitted position. Thus, in the case at hand, we do not find any issue which may require any interpretation or harmonious construction of any provision of the Act or be a ground for holding that the order of supersession dated

22/25-05-2015 of the Additional Registrar, Cooperative Societies, Bihar, Patna in Supersession Case No. 423 of 2014 is erroneous, either on facts or in law.

13. Further, the decision relied upon by the learned counsel for the appellants in the case of Dipak Kumar Jha (supra) has no similarity in the facts and circumstances of the present case, in the said case, after elections, vacancies remained, and the State Election Commission had ordered for fresh elections of the entire Managing Committee, which was held to be impermissible in law.

14. In view thereof, we do not find any error in the judgment of the learned Single Bench which may warrant interference in the present Letters Patent Appeal, which, accordingly, stands dismissed.

15. Interlocutory Application No. 9298 of 2015, for stay of the order dated 22/25.05.2015, having become infructuous, stands disposed off.