
(2012) 09 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 3844 of 2012

Jainath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 6

Citation : (2013) 2 PLJR 300

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Yogendra Mishra and Binod Kumar, for the Appellant; Vinay Kirti Singh and Kunal Tiwary, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner was earlier elected as Chairman of Madhuban Bedivan PACS, Chakia, Motihari. His election was set aside by the Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur under orders dated 17.2.2011 passed in PACS Membership Case No. 14/2009, Annexure-3 to the writ petition, which was challenged before the Registrar, Co-operative Societies, Bihar, Patna in Revision Case No. 35 of 2011. The order sheet of the said revision case is contained in Annexure-4 to the writ petition perusal whereof indicates that revision was converted into an appeal under orders dated 22.11.2011, Annexure-4.

2. This writ petition was initially filed questioning the validity of the aforesaid order dated 17.2.2011, Annexure-3 but this Court having noticed the fact that appeal is pending, observed that the writ petition may be disposed of directing the Registrar, Co-operative Societies, Bihar, Patna to consider the validity of the said order in the pending appeal within a reasonable time, the counsel for the petitioner then submitted that Respondent No. 2, IAS of 2001 batch earlier served as Additional Secretary, Agriculture Department with Additional charge of Director, Animal Husbandry was transferred and posted as Director, Animal Husbandry under notification No. 6061 dated 31.5.2011, Annexure-7 to the

supplementary affidavit and while being so transferred, posted as Director, Animal Husbandry, he was given additional charge of Registrar, Co-operative Societies, Bihar, Patna, which notification though sent to the Government Press, Gulzarbagh, Patna for publication in the gazette, but the gazette having not been published till date, he has no authority to discharge the duties of Registrar, Co-operative Societies, Bihar, Patna, as from perusal of the notification itself, it will appear that he has been given additional charge of Registrar, Co-operative Societies, Bihar, Patna until further orders, which has also not been notified, in the circumstances, Respondent No. 2 not being appointed as Registrar, Co-operative Societies, Bihar, Patna u/s 6 of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the Act), has no jurisdiction to dispose of Appeal No. 35 of 2011 filed against the order dated 17.2.2011, Annexure-3 passed by the Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur. Learned counsel for the petitioner in this connection also placed reliance on sub-section (2) of Section 6 of the Act and submitted that until the notification appointing Registrar, Co-operative Societies, Bihar, Patna is published in the gazette, there is no appointment of Registrar, Co-operative Societies, Bihar, Patna in the eye of law and that being the position, Respondent No. 2 cannot function as Registrar, Co-operative Societies, Bihar, Patna. Learned counsel for the petitioner further relied on Section 28 of Bihar & Orissa General Clauses Act, 1917, which provides for publication of the order, notification in the Official Gazette if it is so provided in the Act, Rules whereunder the order, notification has been issued, the order, notification so published shall be deemed to have been duly made. To support the aforesaid submission, learned counsel relied on the judgment of the Supreme Court in the case of Harla Vs. The State of Rajasthan, and submitted that unless the order, notification of the State Government is published in the Official Gazette, the general public for whose information the same has been directed to be published will have no information about the same and submitted that unless the notification is published in gazette, the same shall not come into effect.

3. Counsel for the State has opposed the submission and submitted that Section 6 of the Act provides for appointment of a person by the State Government to be Registrar of Co-operative Societies for the State. In exercise of the power u/s 6 of the Act, the State Government appointed Respondent No. 2 as Registrar, Co-operative Societies, Bihar, Patna, may be in additional charge until further orders but nonetheless such is an appointment u/s 6 of the Act. He next submitted that gazette notification is required to be published if the person appointed u/s 6 of the Act to assist the Registrar, Co-operative Societies, Bihar, Patna is conferred with power of the Registrar under sub-section (2) of Section 6 of the Act.

4. In the present case, Respondent No. 2 was appointed u/s 6 of the Act as Registrar, Co-operative Societies, Bihar, Patna by giving additional charge of the post until further orders. Section 6 of the Act does not require that the notification of appointment of Registrar, Co-operative Societies, Bihar, Patna be published in gazette, but for general information copy of the notification was forwarded to the Government Press, Gulzarbagh, Patna for publication in the

gazette. It is, however, not known whether the gazette has actually been published. It is submitted by the State Counsel that even if the gazette appointing Respondent No. 2 to be in additional charge of the post of the Registrar, Co-operative Societies, Bihar, Patna has not been published in the gazette, the appointment continues as the same has been made until further orders and till date the State Government has not issued any notification superseding Notification No. 6061 dated 31.5.2011, Annexure-7 and by virtue of the said notification, Respondent No. 2 is functioning as Registrar, Co-operative Societies, Bihar, Patna. Reliance placed by the learned counsel for the petitioner over Section 28 of the Bihar & Orissa General Clauses Act, 1917 is also misplaced as thereunder notification issued in terms of sub-section (2) of Section 6 of the Act is required to be published in the gazette. Section 28 provides for publication of the order, notification issued under any Bihar Act in the gazette provided the Bihar Act whereunder order, notification has been issued require such publication and if published it shall be deemed that the order, notification has been duly made. In the instant case, no notification has been issued under sub-section (2) of Section 6 of the Act which is required to be published in the gazette. The notification dated 31.5.2011, Annexure-7 has been issued u/s 6 of the Act, which does not provide for publication of the notification in the gazette, as such, it shall come into effect no sooner the same is issued.

5. In view of my discussions above, I do not find any substance in the submission of the learned counsel for the petitioner that appointment of Respondent No. 2 is not in accordance with Section 6 of the Act. As I have found that Respondent No. 2 has been validly appointed as Registrar, Co-operative Societies, Bihar, Patna, he has the jurisdiction to dispose of Appeal No. 35 of 2011 filed against the order dated 17.2.2011, Annexure-3 and in such view of the matter, I direct Respondent No. 2 to dispose of Appeal No. 35 of 2011, Annexure-4 as early as possible, in any case before the election programme for holding election of Chakia Vyapar Mandal is issued. The writ petition is, accordingly, disposed of.