
(2023) 01 PAT CK 0030

In the Patna High Court

Case No : Letters Patent Appeal No. 375 Of 2022 In Civil Writ Jurisdiction Case
No. 1181 Of 2021

Jaswant Kumar Jyoti @ Jashwant Kumar Jyoti

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 41(5), 41(5)(a), 41(5)(d)

Citation : (2023) 01 PAT CK 0030

Hon'ble Judges : Ashutosh Kumar, J; Satyavrat Verma, J

Bench : Division Bench

Advocate : Shravan Kumar, Krishna Kumar Singh, S.D. Yadav, S.K. Das, Raja
Ram Rai

Final Decision : Disposed Of

Judgement

Heard Mr. Shravan Kumar, learned Senior Advocate for the appellant and Mr. S.K. Das, learned Advocate for the State. The Chairman of the PACS/respondent no. 8 is represented by Mr. Raja Ram Rai, Advocate.

Mr. Shravan Kumar, learned Senior Advocate has questioned the judgment and order passed by the learned Single Judge of this Court in C.W.J.C. No. 1181 of 2021 on 19.07.2021, as also the order passed in review on 06.07.2022 in Civil Review No. 134 of 2021, whereby the claim of the appellant that the situation had ripened for invocation of Section 41(5)(a)(d) of the Co-operative Societies Act, 1935 for the Managing Committee to be dissolved for fresh elections was rejected.

It is required but to be noted that the claim of the appellant, who had been an erstwhile member of the PACS but had resigned, rested on the premise that respondent no. 9/Dharmendra Kumar Singh was never inducted as the Manager of the PACS and by excluding him, the vacant position in the Co-operative Society with twelve members was reduced to seven and therefore, there was a

need for the Registrar to have dissolved the Governing Body of the PACS and to have called for fresh elections.

The learned Single Judge did not agree to such proposition and holding that Dharmendra Kumar Singh was on the rolls, directed the Chairman of the PACS to intimate the vacancy position to the District Co-operative Officer, who would, in turn, liaise with the State Election Authority for filling-up the vacant position.

Shortly thereafter, a review petition was filed by the appellant, seeking modification in the order on the ground that a wrong statement had been made by the writ petitioner by counting the respondent no. 9 as the appointed office-bearer of the Managing Committee.

In the review application, the allegation against the writ petitioner having made a wrong statement, was rejected by the learned Single Judge. Thereafter the appellant challenged only the order passed in review and when confronted by the Court, made an additional prayer for granting permission to challenge the judgment passed in the writ petition also.

At this stage, it would be appropriate to refer to the objection raised by respondent no. 9 with respect to the maintainability of this Appeal. It has been submitted that in the absence of the appellant having challenged the original order and only the order in the review application being questioned, when such review has been dismissed, L.P.A. would not be maintainable even by pressing the doctrine of merger of the original order with the order in review.

We, for the time being, would not enter into the present dispute for the reason that we find from the counter affidavit of the State that, as on date, only six positions are vacant, which number has been arrived at after excluding respondent no. 9, who claims himself to be the Manager of the Co-operative Society. The Co-operative Society has twelve members, out of whom four have resigned and two posts remained vacant from before. The quorum of the Co-operative Society is seven.

Section 41(5) of the Co-operative Societies Act, 1935 beckons that a Registrar could 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 have resigned from the respective membership or office; or

(b) half of 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.

The bone of contention between the warring members of the Co-operative Society is whether respondent no. 9 was ever inducted as a Manager of the Co-operative Society.

Mr. Shravan Kumar contends that no resolution of the Co-operative Society has been brought on record to demonstrate that Dharmendra Kumar Singh (respondent no. 9) had ever participated in the Board meetings as the Manager of the society.

On the contrary, Mr. Sudhir Kumar Singh, learned Advocate, who has appeared for respondent no. 9, has shown to us a resolution of the society clearly indicating that he had been inducted as a Manager on the choice of the Chairman of the Society but with the approval of the other members.

Mr. Shravan Kumar however has submitted that the audit report of the time when the position had fallen vacant by majority does not at all disclose rather refutes the assertion of respondent no. 9 that he ever was on the rolls as an office-bearer.

These are issues of facts which cannot be decided either in a writ petition or in appeal.

If the vacant position is less than the half of the total membership, the Chairman of the Co-operative Society is obligated to inform the vacancy position to the District Co-operative Officer, who after ascertaining the facts, is required to liaise with the State Election Authority for having the positions filled.

In the present case, there is a dispute with respect to the current vacant position which would automatically trigger the invocation of Section 41(5) of the Co-operative Societies Act, 1935.

As we have noted earlier, the issue with respect to the total number of the members of the Co-operative Society as on date can be better decided by the authorities of the Co-operative Department.

We, therefore, in the appellate jurisdiction find it prudent to relegate the issue before the Registrar of the Co-operative Societies, where the parties shall present themselves and shall state their respective stand within fifteen days of the passing of this order, on which an adjudication shall be made by the concerned Registrar after hearing all the stake-holders, as to whether the entire Co-operative Society is required to be dissolved and fresh elections be held or that the matter be referred to the District Co-operative Officer for the needful viz. to liaise with the State Election Authority for filling-up the vacant posts.

The afore-noted decision by the Registrar shall be taken within a period of thirty days of this issue being brought to his notice.

The appeal stands disposed of accordingly.