
(1992) 11 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 11329 of 1992

Jitendra Prasad Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 BLJR 60

Hon'ble Judges : S.N. Jha, J;A.N. Chaturvedi, J

Bench : Division Bench

Judgement

S.N. Jha and A.N. Chaturvedi, JJ.—The dispute in these two writ applications being common, they have been heard together and are being disposed by this common order.

2. The dispute relates to the election of the members and the office-bearers of the Nandan Co-operative Development and Cane Marketing Union Ltd., Lauriya in the District of West Champaran (hereinafter referred to as "the Societies"), C.W.J.C. No. 11329 of 1992 has been filed by the society and two others claiming to be its elected Chairman and Secretary, C.W.J.C. No. 11589 of 1992 has also been filed by the same Society and another, claiming to be its existing Chairman. The petitioner of the former writ petition has challenged the order of the Deputy Development Commissioner, West Champaran (in short "D.D.C.") dated 5-11-92, describing himself as the ex-officio Election Conducting officer (Nirvachan Sanchalan Padadhikari) by which he has stayed the election process and appointed a Special Officer in anticipation of the approval of the Registrar, Co-operative Societies. The latter part of the order appointing Assistant Registrar, Co-operative Societies, Bagaha, has also been challenged by the petitioner of C.W.J.C. No. 11589 of 1992, who has further challenged the order of the D.D.C. dated 31-8-92 purporting to the Election officer and the alternate Election Officer to hold and conduct the election of the members and office-bearers of the society, as also the purported declaration of the result made on 29-10-92.

3. Mr. Yogendra Mishra, learned Counsel for the petitioners in C.W.J.C. No. 11589 of 1992, submitted that the entire election process was without jurisdiction and, therefore, the purported election of the member, the officebearers was void. He referred to certain provisions of the Bihar Co-operative Societies Rules, 1959 (in short "the Rules"), which we shall presently notice. Mr. Ajyendu Bose, learned Counsel for the petitioners in C.W.J.C. No. 11329 of 1992 challenging the order of the D.D.C. dated 5-11-92, submitted that the election could not be set aside by an executive order and the remedy was by way of election petition. In reply to the submissions of Mr. Mishra he submitted that this Court should not interfere with the results of an election in a writ petitioner under Articles 226 and 227 and particularly without hearing the person who may ultimately be affected. It was pointed out that two election petitions bearing Case Nos. 110 and 118 of 1992 have already been filed and are pending before the Registrar. In view of the order that we propose to pass it is not necessary to defer the disposal of these cases.

4. Rule 21-A of the Rules, inter alia, provides that the election of the members and the office-bearers of the managing committee shall be held in a special general meeting in accordance with Rules 21-B to 21-X. Rule 21-B provides that the State Government may by notification direct that subject to the general superintendence, direction, control and supervision of the Registrar of Co-operative Societies, the power to organise election in a district level Cooperative Societies shall vest in the District Co-operative Officer of the Deputy Development Commissioner of a district. Under Rule 21-C the said Authority is vested with the power to organise the election and fix date for holding elections. The Authority is empowered under Rule 21-D to appoint an Election Officer and alternate Election Officer. He has further been empowered under Rule 21-I to prepare or cause to be prepared a list of Societies in which election falling due in the next co-operative year and to direct the society concerned to submit a list of their members to the Election Officer concerned. Rule 21-K provides that a special general meeting for the purpose of election in a society shall be held on the date or the dates fixed by the said Authority. The Election Officer so appointed by the Authority shall appoint Polling officer under Rule 21-F and fix election schedule under Rule 21-N. There are various other provisions under which the Election Officer has to keep the Authority informed and get his approval of certain acts done by him. Reference may be made to Rules 21-T, 21-U and 21-V.

5. It is an admitted position that the State Government appointed the District Magistrate, West Champaran, as the Authority under Rule 21-D (2) for the district of West Champaran to organise election in the Co-operative societies of that district vide notification dated 20-9-92. Thus, by reason of such appointments all powers vested in the Authority under the aforementioned provisions had to be exercised by the District Magistrate and the D.D.C. West Chamaran was a complete stranger. However, admittedly again, it is he who appointed Sri Sheo Dutta Ram, second Officer, Bagaha and Sri R.K. Singh, Deputy Collector, Bagaha, as the Election Officer and alternate Election Officer,

who are ultimately said to have held and conducted the entire election. We have no manner of doubt that the entire election process organised by the D.D.C. was without jurisdiction.

6. On the facts of this case, we are not impressed by the plea of Mr. Bose that this Court should not entertain the grievance, in a writ petition and without hearing the persons, who are said to have been elected. The D.D.C. has, already undone and set at naught the entire election process and there is nothing which is required to be done further so long as that order stands. In our writ jurisdiction there is no question of interfering with that order on the ground that the election cannot be set aside by an executive order since any interference by this Court would result in revival of an illegal election except the last part of the order dated 5-11-92 by which he has appointed Assistant, "Registrar, Co-operative Societies, Bagaha, as the Special Officer. However, as noticed above, that appointment is in anticipation of the approval of the Registrar. In terms of Rule 21-B the power to general superintendence, direction, control and supervision with respect to elections in Co-operative Societies vests in the Registrar. We, in the circumstances, direct the Registrar to consider the matter in the light of our observations made above and issue appropriate order in accordance with law.

7. For the reasons stated above, C.W.J.C. No. 11329 of 1992 is dismissed, C.W.J.C. No. 11589 of 1992 is, however, disposed of with the observations as above.