(2014) 11 PAT CK 0071

In the Patna High Court

Case No : C.W.J.C. No. 24513 of 2013

Manoj Kumar Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 14(3), 2(i), 40, 66-B
Constitution of India, 1950 — Article 19(c), 243-ZT, 43-B

Citation : (2015) 1 PLJR 639

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Ishwari Singh, Advocates for the Appellant; Rajeev Shekhar, Advocates for the Respondent

Judgement

Jyoti Saran, J.—One of the Directors of the Bihar State Co-operative Bank Ltd. (hereinafter referred to as "the Bank''), a society registered under the provisions of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as ''the Act'') and the Rules framed thereunder, has ventured to question the posting of the respondent No. 5 Mr. Ajay Kumar Verma as a Chief Vigilance Officer of the Bank and has prayed for a writ in the nature of mandamus commanding the respondents to withdraw his services. The petitioner even while praying as such has not sought to question the transfer/posting order of the respondent No. 5 rather he seeks a direction to the respondents to withdraw his services inter alia on grounds that his posting is not only contrary to the statutory provisions underlying the Act and the Rules framed thereunder but is also contrary to the mandate of the 97th constitutional amendment whereby several incorporations have been made in the Constitution of India highlighting the autonomy and independence of the Co-operative Societies. This is the sum and substance of the grievance raised in the writ petition. An issue of locus has been raised by the respondents including the private respondent who has appeared in person questioning the right of the petitioner to raise such issues even when no such opposition has been made by the Bank but in my considered opinion, it is to late in the day now to raise issues of locus and if the petitioner has raised an issue which stares at the very exercise of executive power by the State and raises eye brows as to the source for such exercise, I would not be persuaded to shut the doors for the petitioner merely on account of the fact that the Bank of which he happens to be a Director, has not chosen to raise such issue.

2. Law is well settled on the issue of ''Locus'' and it is the gravity of an issue raised by a person which becomes the relevant factor for inviting the consideration of a writ Court rather than the personal interest of the person raising such issue. The term ''person aggrieved'' has undergone a sea change and unless it is established that a person raising, any issue is a meddlesome interloper or a busy body trying to gain populistic mileage by way of a writ petition normally a writ Court will not decline to enter into the issues of facts and law raised in a writ petition. That the petitioner happens to be a Director of the Bank in which the private respondent has been posted as a Chief Vigilance Officer, in my opinion, he has sufficient interest to question his posting if the same is in contravention of the constitutional mandate and/or the statutory provisions governing the Act and the Rules.

3. My opinion hereinabove answers the objection of locus raised by the respondents.

4. I would now proceed to consider the issue raised by the petitioner against the statutory and the constitutional provision.

5. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner assisted by Mr. Ishwari Singh, Mr. Anshuman Singh learned G.P. 24 assisted by Mr. Rajeev Shekhar has appeared for the State, Mr. S.N. Pathak has appeared for the Bank and Mr. Ajay Kumar Verma the respondent No. 5 has chosen to appear in person.

6. The parties have been heard at length and since the pleadings are complete hence with their consent, the writ petition is being finally disposed of at the admission stage itself by way of this judgment.

7. Mr. Giri learned Senior Counsel appearing for the petitioner has referred to the various provisions of the Act in support of his argument and to submit that the autonomy and the independence of the Co-operative Societies has gained relevance and even if the State has succeeded in forcing the respondent No. 5 on the Bank for the last more than 7 years his continuation any further, in view of the 97th Amendment to the Constitution which came into force on ''12.1.2012 and in view of the amended provisions of Section 66-B in the Act empowering the Co-operative Societies in formulation of the type of posts, their numbers as well as the procedure for recruitment against such post, the continuation of respondent No. 5 would be in teeth thereof and thus an illegality.

8. Mr. Giri referred to Section 2(i) of the Act to submit that it defines ''Short Term Co-operative Credit Structure'' and which includes the State Co-operative Bank,

the Central Co-operative Bank and the Primary Agriculture Credit Societies. He submits that the Bihar State Co-operative Bank is an apex body and Chapter-VI-D of the Act deals with these Short Term Co-operative Credit Structure. With reference to Section 44-AT he submits that the provisions of Chapter-VI-D has an overriding effect on other provisions of the Act and Section 44-AV provides autonomy to the Short Term Co-operative Credit Structure in all financial and internal administrative matters. With particular reference to sub-section (d) thereof he submits that the Act grants autonomy to the Short Term Co-operative Credit Structure in the matter of personnel policy, staffing recruitment, posting etc. Mr. Giri next turned to Section 66-B of the Act to submit that the provisions was amended consequent upon the 97th Amendment of the Constitution and whereby exclusive powers have been vested in the Co-operative Societies in the matter of formulation of type of posts, their numbers and the procedure for recruitment of personnel thereof. He submits that the provisions of Section 66-B was amended under Act 6 of 2013 and whereafter the continuation of the private respondent as a Chief Vigilance Officer, would be without sanction of law. With reference to Section 14(3) of the Act he submits that the only exception to this settled legal position is the posting of the Managing Director which remains intact. Mr. Giri next referred to the Service Regulations, 2013 framed by the Board of Directors of the Bihar State Co-operative Bank Ltd. placed at Annexure-2 of the writ petition in exercise of power vested under Section 44-AV(d) of the Act and submits that a Vigilance Cell has been created under the Service Regulations to be headed by a Senior Officer of a Bank. With reference to Clause 7 of the Service Regulations it was submitted that the Board of Directors have been conferred with powers of appointing authority of officers either to be appointed through direct recruitment or by promotion. Learned counsel with reference to a letter of the Registrar, Co-operative Societies bearing Memo No. 5196 dated 14.11.2013 placed at Annexure-6 submits that the right of the Bank in the matter of recruitment of its personnel stands recognized by the Registrar who also admits that by virtue of the amendments incorporated in the Act, his role stands confined as an advisor only. Learned counsel referred to the provision underlying Article 19(c), Article 43-B and Part-IX-B of the Constitution of India to submit that the autonomy and independence of the Co-operative Society stands recognized under the Constitution. Learned counsel in support of his submission has relied upon a judgment of the Supreme Court rendered in the case of Thalappalam Ser. Coop. Bank Ltd. and Others Vs. State of Kerala and Others, and with particular stress on paragraphs 17 to 23, 53 and 54 it is submitted that the continuation of the respondent No. 5 would be an interference with the internal affairs of the society. Learned counsel in this regard has also relied upon of a judgment of the Supreme Court reported in Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, paragraphs 12 to 23 in support of his submission that the posting of the respondent No. 5 was an interference with the statutory function of the Society. Learned counsel has also referred to some Minutes of the Meeting placed at Annexures-3 and 4 in order to demonstrate the interference of the respondent No. 5 with the internal matters of the society. Mr.

Giri referred to the Vigilance Manual, the relevant extract whereof is placed at Annexure-8 to the supplementary affidavit to submit that there is no provision of posting of a Vigilance Officer in the Society nor does the provisions of the Manual bind the society rather it is meant for the State and their units. Learned counsel with reference to paragraphs 2.7 and 2.9 of the Vigilance Manual has submitted that in any view of the matter a tenure of a vigilance officer is only for 3 years extendable by a further two years in the same organization but in so far as the posting of respondent No. 5 is concerned, he has continued uninterruptedly since 7.11.2007.

9. Mr. Giri submits that in view of these circumstances, the latest posting order issued by the State Government bearing Memo No. 319 dated 22.1.2014 placed at Annexure-C of the counter affidavit filed on behalf of the Co-operative Department extending the deputation of the respondent No. 5 indefinitely is not only an illegality but is an abuse of the executive powers.

10. The arguments of Mr. Giri has been contested rather strenuously by the respondent No. 5 who has appeared in person and while clarifying his no particular interest to the post, it was submitted by Mr. Verma that there was no illegality in his posting orders. He submits that with 25% of the share holding in the society being owned by the State, the State had a right to regulate the function and the expenditure of the society and for which purpose the posting of a vigilance officer became a necessity even if it is to the dislike of the Directors. Although Mr. Verma endeavoured to demonstrate the checks and balances undertaken by him during his tenure but it is not the good work being carried out by Mr. Verma which is put to question in the writ petition rather the petitioner has questioned his very posting as being contrary to statutory provisions as well as the constitutional mandate. Mr. Verma has referred to the provisions underlying Section 14(3) of the Act to submit that there was no infirmity in the posting of the Chief Vigilance Officer in the Bank and when the provision refers to an Executive Officer, his posting as a Chief Vigilance Officer would be governed by the nomenclature.

11. A counter affidavit as well as a supplementary counter affidavit has been filed by the respondent No. 5 in support of his contentions that the posting of a Vigilance Officer is a necessity. Mr. Verma has referred to paragraph 14 of the supplementary affidavit to support his submissions. Questioning the right of the petitioner to raise such issues, it was contended by Mr. Verma that whereas the petitioner has obtained share holding by a meager deposit of Rs. 10/-, the benefits derived by him as a Director of the Society is manifold and since the respondent No. 5 is a spanner to wasteful expenditure, hence feeling the pinch that the petitioner has chosen to question his posting.

12. The arguments of Mr. Verma stands fully supported by Mr. Anshuman Singh appearing for the State.

13. With reference to the relief prayed in the writ petition it was submitted that

even when the petitioner has sought to question the posting of the respondent No. 5, he has neither challenged the orders of his posting nor has he chosen to question the latest order placed at Annexure-C to the counter affidavit of the State whereby the deputation of respondent No. 5 has been extended until further orders. He further submits that even when no objection has been raised by the Bank against the posting of the private respondent, the petitioner has sought to question the same and the reason is plain and simple because the respondent No. 5 is a stickler for the rules and does not shirk from taking hard decision to the dislike of the petitioner, With reference to Clause 2.6(1) and Clause 2.6(2) of the Service Regulation and Section 14(3) of the Act it is submitted that the posting of a Vigilance Officer in executive capacity would stand covered and there is no illegality in the same. Learned counsel has referred to a judgment passed by a Full Bench of this Court in the case of Sheetal Prasad Gupta and Others Vs. State of Bihar and Others, and with particular reference to paragraphs 5, 6, 16 to 18, 25 to 28, 44 and 45 he submits that there is no infirmity in the continuation of the respondent No. 5.

14. Whereas the stand taken by the petitioner, the State and the private respondent is absolutely specific, it is rather surprising that the Bank has chosen to remain outside the controversy and though a short counter affidavit has been filed on their behalf enclosing certain resolutions of the Board of Directors reminding the authorities of the Co-operative Department regarding the tenure of the respondent No. 5 but the stand of the Bank is clearly confused.

15. Mr. Giri in his short reply has submitted that counsel for the respondents except for raising unimportant issues like locus have neither chosen to reply to his argument on Section 66-B of the Act nor have been able to demonstrate the source of power vested in the State to post the respondent No. 5 as a Chief Vigilance Officer in the Co-operative Bank.

16. I have heard learned counsel for the parties and I have perused the materials on record.

17. As I have mentioned at the very start of this judgment that the core issue involved in this writ petition is whether the State in its Home (Police) Department is vested with powers to post the respondent No. 5 as a Chief Vigilance Officer with the Bihar State Co-operative Bank Ltd. vide Notification bearing No. 10215 dated 26.10.2007 and whether the extension of his deputation vide letter dated 29.4.2011 and presently vide Memo No. 319 dated 22.1.2014 has the sanction of law. There would be no one to dispute the contentions advanced by the State as well as by the respondent No. 5 who has appeared in person that the society in question dealing in financial matters, also needs a hawk eye vigilant supervision. This principle is very sound in theory but the question remains as to the source of power for posting such officer. Obviously, the State has to be vested with sufficient powers to post a Vigilance Officer in the Co-operative Bank and merely because it holds 25% stake in the Co-operative Society, it would not be possessed with extra constitutional authority to post officers in the Society on

whims and fancy. The autonomy of the Co-operative Society and its independence is its constitutional right. Although there are certain regulatory provisions in the Act and the Rules framed thereunder vesting powers in the State Government to regulate the activities of the Co-operative Societies but its source and extent has to be found within the statutory provisions.

18. The contesting parties have referred to several constitutional and statutory provisions but for the issue involved in this writ petition, I do not intend to refer to all of them rather would concentrate only to the relevant provisions which cover the issue. The 97th Amendment to the Constitution grants recognition to the autonomy and the independence of the Cooperative Societies and Chapter-IX-B incorporated under the said amendment more particularly Article 243-ZT clears all doubts that any provision in any law relating to Co-operative Societies which was in force immediately prior to the commencement of the 97th Amendment and was inconsistent with the provisions of Chapter-IX-B, would continue to be in force only for a period of one year from the commencement of the amendments under the 97th Amendment Act which was enforced on 12.1.2012. Meaning thereby any provision in the Act which was inconsistent with the 97th Amendment would stand repealed to that extent on or after 11.1.2013.

19. I need not go into the details of the inconsistencies rather I would like to concentrate on the statutory right vested in the Co-operative Societies under the constitutional mandate and the statutory provisions qua source of power vested in the State Government to regulate the activities of such societies. As rightly submitted by Mr. Giri, Chapter-VI-D of the Act deals with the Short Term Co-operative Credit Structure and has an overriding effect over other provisions.

20. Section 44-AV deals with autonomy of such Short Term Co-operative Society Structure in administrative and financial matters and runs as follows:--

"44-AV. Autonomy in all financial and internal administrative matters.--A co-operative society under Short Term Co-operative Credit Structure shall, have autonomy in all financial and internal administrative matters including the following areas:--

(a) Interest rates on deposits and loans in conformity with Reserve Bank Guidelines.

(b) Borrowing and investments.

(c) Loan policies and individual loan decisions.

(d) Personnel policy, staffing, recruitment, posting and compensation to staff, and

(e) Appointment of auditors and compensation for the audit and internal control system."

21. The next relevant provision is Section 66-B which was amended vide Act 6 of 2013 and whereafter it reads as follows:--

"66-B. (1) Notwithstanding anything contained in this Act or the rules and bye-laws made thereunder, the State Government may, from time to time, by special or general order, determine the nature and number of posts to be created and the mode of recruitment of personnel by Co-operative Societies and prescribe among other things--

(1) the qualifications, age and experience,

(2) the pay scale and other emoluments.

(3) the method of recruitment,

(4) the conditions of service, and

(5) the disciplinary procedure to be followed.

(2) Any appointment made in contravention of the order of the State Government under sub-section (1) shall be void as if no such appointment ever existed and salary and other allowances paid if any, shall be recoverable under Section 40."

22. It is by virtue of the constitutional and statutory amendments that the Board of Directors of the respondent Bank framed a Personnel Policy in the form of Service Regulation, a copy whereof has been placed at Annexure-2 which was enforced on 7.6.2013 and specifically provides for a vigilance cell to be headed by a senior officer of the Bank.

23. The issue posed before this Court is whether in view of the statutory provisions of Section 44-AV and Section 66-B of the Act and the framing of the Service Regulations by the respondent Bank in 2013, the respondent State in its Home (Police) Department and the Co-operative Department can continue with the posting of the respondent No. 5 deriving powers under Section 14(3) of the Act and whether at all the said provision confers any such power on the State in its Home (Police) Department and the Co-operative Department to post a vigilance officer. The relevant portion of Section 14(3) of the Act runs as follows:--

"14. (3) An Officer of the State Government if deputed to a registered society either as a Managing Director, Executive Officer or in similar position shall be the Chief Executive thereof and subject to general direction and control the Managing Committee, shall have the following powers and functions:--

(i)...

....

(xi)......................................"

24. A plain reading of the provisions makes it luminescent that the three categories of officers mentioned in the said provisions are not inclusive rather are exclusive of each other. Meaning thereby the provision vests power in the State

Government to depute an officer of the State Government either as a Managing Director or an Executive Officer or in a similar position who shall be the Chief Executive thereof and would be subjected to the general direction and control of the Managing Committee. There is absolutely no iota of doubt that the State Government is possessed with no power to post any officer other than the Managing Director in the Co-operative Bank be it in any capacity and even if a requirement of a vigilance officer would be a dire necessity, the source of power to post a Chief Vigilance Officer in the respondent Bank is manifestly absent. Section 14(3) of the Act which is the only source of power vested in the State Government to post an officer in the executive capacity clearly demarcates the extent of such exercise and leaves no room for confusion that the State can post only one of its officer under the nomenclature of a Managing Director or an Executive Officer or the like but it cannot enhance the strength. No doubt the petitioner has not questioned the posting orders but his questioning of the posting of the private respondent No. 5 in the backdrop of the question of law raised in paragraph 2 makes the consequential effect, a mere formality. The moment this Court would come to a conclusion that the State in its Home (Police) Department has no power to post any officer as a Chief Vigilance Officer, the striking down of the posting order would be only a consequence thereof and it would be a hyper-technicality to refuse the relief flowing from the pleadings to the petitioner merely on account of the fact that it has not been specifically prayed for in the writ petition.

25. The law stands well settled on this issue and where the pleadings in a writ petition in the back-drop of the issue raised by the petitioner, entitles him to relief, a writ Court would not refuse such relief on a hyper-technicality of absence of a specific prayer to that effect more particularly where such relief is only a consequence to the upholding of the issues raised by a writ petitioner. The principles underlying moulding of relief by writ Court stands crystallized and is no more an issue of debate.

26. My discussion on the issue would lead to only one conclusion and which is that the State in its Home (Police) Department/Co-operative Department has no jurisdiction to post more than one officer in the respondent Bank while exercising powers under Section 14(3) of the Act and since there is no dispute on the posting of a Managing Director in the respondent Bank, the posting of the respondent No. 5 as Chief Vigilance Officer and his continuation would be contrary to the statutory provisions and the constitutional mandate.

27. In result, the order bearing Memo No. 319 dated 22.1.2014 issued by the Deputy Secretary. Co-operative Department whereby the deputation of the respondent No. 5 as Chief Vigilance Officer with the Bihar State Co-operative Bank Ltd., has been extended until further orders as contained in Annexure-C to the counter affidavit filed on behalf of the respondent Nos. 1, 2 and 4, cannot be upheld and is set aside. As a consequence, the service of the respondent No. 5 stands returned to the Home (Police) Department, Government of Bihar. Patna.

The writ petition is allowed without any order as to costs.

