

(1987) 07 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 256 and 489 of 1987

Md. Maqsood Alam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Constitution of India, 1950 — Article 166(3)

Criminal Procedure Code, 1973 (CrPC) — Section 340(1)

Citation : (1987) PLJR 958

Hon'ble Judges : P.B. Prasad, J;L.M. Sharma, J

Bench : Division Bench

Advocate : A. Bose, S.P. Gupta and Kaushal Kumar, for the Appellant; M.S. Madhup, S.C.I., Kishore Kumar Mandal, J.C. to S.C.I., Rana Ravindra Kumar Singh, Kamlapati Singh and Miss Sangita Das Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The petitioners have challenged the decision of the State Government taken u/s 47 (6) and (7) of the Bihar and Orissa Co-operative Societies Act, 1955 (hereinafter referred to as "the Act"). Originally, the writ application was filed on 16.1.87. Due to the strike of Class III and IV employees of the State Government including those working in the Court, the records were not available for sometime and since the petitioners urgently needed to move in the matter, they filed as identical writ application which was registered as C. W. J. C. 489 of 1987. The Learned Counsel for the parties have submitted their arguments with reference to the records of the latter case. The petitioners claim to have been duly elected as the Directors of the Bihar Sharif Regional Handloom Weavers' Co-operative Union, a central society-its members being primary weavers' cooperative societies-at the Annual General meeting of the Society on 10.11.86. The Annual General meeting is said to have been called by the outgoing Board of Directors, It is stated that the election has been challenged u/s 48 of the Act before the Deputy Registrar, Patna Division who fixed the case for hearing on 23.3.87. In the meantime, the Board of Directors, that is the

Managing Committee of the Society was dissolved by the order dated 13.1.87 as contained in Annexure 1 under the provisions of Section 41 (6) of the Act. The petitioners immediately challenged this order before this Court. During the pendency of this case, the petitioners were served with a show cause notice and after hearing them the notification, Annexure 1 was confirmed by the order dated 29.6.87, as contained in Annexure "D" to the counter affidavit of the respondent No. 1 (page 59 of the records), passed by the State Minister, Handloom and Handicrafts. The petitioners have also made a prayer for quashing this order.

2. Mr. Bose, the Learned Counsel appearing in support of the writ application, pressed the following points in support of the writ application.

(i) Sub-section 6 of Section 41 of the Act is ultra vires and the impugned orders are therefore, fit to be quashed as void;

(ii) The order in Annexure "D" having been passed by the State Minister incharge of the Industry Department is without jurisdiction in view of the Rule of Executive Business and the decision of this Court in *Lachandeo Sahni v State of Bihar and others*: 1982 B.B.C.J. [4 and *Abdul Gafoor v. State of Bihar* AIR 1983 Patna 114: 1983 PLJR 196];

(iii) The orders having been passed on irrelevant and illegal grounds are bad.

3. In support of the first point, Mr. Bose contended that since Section 41 (6) of the Act purports to clothe the State Government with power to dissolve the Managing Committee without giving to such Committee any notice or any opportunity to be heard, it has to be struck down as unconstitutional on the ground of violation of the principles of natural justice. He placed reliance on the observations in *State of Mysore v. Allum Karibasappa*: A. T. R.1974 S. C. 1863 and *Ram Dial and others v. State of Punjab*: A. I. R. 1965 S. C. 1518, and further contended that the formality of subsequent hearing cannot cure the defect in view of the observations in *Ram and Shyam Company v. State of Haryana*: A. I. R. 1985 S. C.1147.

4. The question of vires of the sub-section was considered by a Division Bench of this Court in *Brijesh Rai v. State of Bihar* : 1982 B. B. C. J. 190: 1982 PUR 136, at considerable length and it was held that the sub-section is a valid piece of legislation. While interpreting the sub-section, the Bench said that although not mentioned in express terms, sub-section 6 must be read to require the matter to be reconsidered in presence of the Committee sought to be dissolved. The provisions about immediate dissolution without giving notice empowers the State only to pass a tentative order subject to the final decision. In view of this decision, which is binding on us, the first point is rejected. As has already been stated, the petitioners were given a chance to be heard before the final order in Annexure D was passed.

5. On the second question as to whether the State Minister was empowered to

pass orders u/s 41(6) of the Act or not, Mr. Kamalapati Singh, the Learned Counsel for the respondents has drawn our attention to Rule 6(1) of the Rules of Executive Business framed under Article 166(3) of the Constitution of India which is in the following term:

6(1) The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more departments to the charge of a Minister.

Provided that nothing in this rule shall prevent the assigning of one department to the charge of more than one Minister

The fifth rule states that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between these departments as laid down therein. In accordance with Rule 6, an appropriate order has been issued allocating the Handloom wing of the Co-operative Department under a separate Directorate of Handloom, and has been placed under the Industry State Minister. The relevant documents have been placed on the records by the respondents. In view of the provisions of Rule 6(1) and specially the proviso quoted above, I do not find any merit in the petitioners second point either.

6. So far as the third question raised on behalf of the petitioners is concerned, Mr. Bose appears to be right in the submission. The notification, Annexure 1, states that with a view to stop mismanagement in the affairs of the Cooperative Society, it is necessary to immediately dissolve the Managing Committee. No details on the basis of which the inference of mis-management could be drawn have been mentioned-The Minister heard the parties and considered the matter and the reason which he assigned for confirming the decision was a supposed illegality in the election dated 10.11.1986 when the petitioners were elected. It has been mentioned in Annexure D that the High Court in another writ case, which was registered as C. W. J. C. 4947/86 had passed an interim order on 6.11.86 staying the operation of the order in Annexure 6 attached to the aforesaid writ application and in that view, the election of 10.11.86 cannot be treated to be valid. Thereafter, the Minister proceeded to say as follows:

In view of the facts stated above, I hold that it was in the interest of the Union and the co-operative movement to prevent the Board of Directors from functioning with immediate effect failing which it would have led to serious complications including misuse and misappropriation of funds of the Union.

The question is as to whether this view is correct.

7. Annexure 6 to C. W. J. C. 4947/86 was an order passed by the Minister u/s 65A of the Act while dealing with the dispute in regard to an earlier alleged election. The election of 10.11.86 was fixed by the outgoing Board of Directors and was being held in obedience to the order in Annexure 6. The Directors were purporting to hold the election, in accordance with the provisions of the Act and

the Rules, and the Minister in his order, Annexure 6. had merely made a reference, to the same. As a result of the stay order passed by this Court, the operation of the Ministers order only was stayed and not the election, which was being held as a result of the other steps taken in this regard in accordance with the statutory provisions. I, therefore, hold that it is not correct to suggest that the election of 10.11.86 (as claimed by the petitioners and denied as a fact by certain persons) must be ignored as illegal on the ground given in Annexure D.

8. The real purpose of enacting sub-sections 6 to 10 of Section 41 of the Act is to prevent a serious apprehended mismanagement of a Society which cannot be averted except by acting under the sub-sections without delay. There should, therefore, be some material which can sustain such an apprehension in that regard. The sub-section 6 therefore, requires submission of a report by the Registrar. In the present case, a report was, in fact, received, but, it was submitted on 6.9.86. Such a report could not have expressed an apprehension of mismanagement by a new Managing Committee which was still to come after the election dated 10.11.1986. In substance the action taken by Annexure 1 was without any material and the reason given in Annexure D for confirming the order by the Minister is irrelevant.

9. Mr. Kamlapati Singh, appearing on behalf of some of the respondents, contended that another set of persons are claiming to have been elected on 30.4.86 and a parallel body is now claimed by the petitioners to have come into existence and this is certainly creating a situation which cannot be called healthy for the success of a Co-operative Society. Confusion and chaos were likely to follow and therefore, the impugned step was justifiably taken on behalf of the State. The interveners who claimed that an election was duly held on 30.4.1986 have intervened and their counsel has been heard. It is conceded that an election dispute u/s 48 of the Act has arisen with respect to that election also and an order of stay was passed against the intervenors. It was stated by Mr. Bose on behalf of the petitioners that, as a matter of fact, that election has been declared illegal by the Registrar. This fact is not accepted by the respondents. I will, therefore, assume for the purpose of the present case that a dispute is still pending but there is an operative order of stay against the persons claiming to have been elected therein, The earlier Managing Committee (Board of Directors) which was managing the affairs of the Cooperative Society for several years must, therefore, be held to continue to manage the affairs till 10th November, 1986. What happened on 10.11.86 is also the subject matter of serious dispute between the parties. According to the respondents and the intervenors, this election is also wholly illegal. As the question regarding validity of this election is a matter within the exclusive jurisdiction of the Registrar u/s 48 of the Act, I do not think it proper to express any opinion on this issue. But I am clear in my mind that the view of the State Minister as indicated in Annexure D is incorrect and that cannot be made the basis of a decision to dissolve the Managing Committee. I am not in a position to agree with Mr. Kamlapati Singh that the State can justifiably pass an order u/s 41 (6) of the Act merely because, some

body challenges the validity of an election. The purpose of sub-section 6 has been discussed at some length in *Lachandeo Sahni v. State of Bihar* 1982 B. B. C. J. 14 and on the ground suggested on behalf of the respondents the impugned orders cannot be sustained. For the reasons mentioned, Annexures I and D are quashed. Mr. Kamalapati Singh suggested that in the circumstances, an interim direction should be issued by this Court for management of the Society by another body until the dispute about the validity of the election of 10.11.86 is duly decided by the Registrar. I do not think it proper to do so. If the situation in the affairs of the Co-operative Society so demands, appropriate steps can be taken under the Act by the Registrar or other competent authorities to protect the interest of the Co-operative Society and I do not think that unless some order is passed just now, the Co-operative Society is likely to suffer irreparable loss. In the result, the writ applications are allowed in the above terms but the parties are directed to bear their own costs. The application u/s 340(1) of the Code of Criminal Procedure filed by the respondent No. 7 has not been pressed before us and is dismissed.