

(1988) 07 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4651 of 1986

Nand Kishore Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1988

Acts Referred:

Bihar and Orissa Co-operative Societies Act, 1935 — Section 41(1), 41(2)
Constitution of India, 1950 — Article 12

Citation : (1988) PLJR 1065

Hon'ble Judges : D.K. Sen, C.J;N.P. Singh, J

Bench : Division Bench

Advocate : Shrenandan Prasad Singh, Pramod Kumar Sinha, Murari Narayan Choudhary and Rajiv Ranjan Sinha, for the Appellant; M.S. Madhup, M.D. Sharma and Lalit Kishore, for the Respondent

Judgement

N.P. Singh, J.—This writ application has been filed on behalf of ten petitioners for quashing an order dated the 28th May, 1985, issued by the Deputy Commissioner-cum-Special Officer, of the Deoghar-Jamtara Central Co-operative Bank Ltd. (hereinafter to be referred to as "the Bank") terminating the services of the petitioners and others. A prayer has also been made to quash another order dated the 7th June, 1986, passed by the Special Officer, on the representation filed on behalf of the petitioners, saying that it was not possible for the Bank to allow the petitioners to join their services. On the 11th February, 1983 an advertisement was issued by the then Secretary of the Bank, inviting applications for appointment to different posts in Class III and Class IV. In pursuance to that advertisement several persons made applications. On the 5th March, 1984, 43 persons including the petitioners were appointed on temporary basis as Assistants, typists and peons by the Secretary of the Bank. Pursuant to the appointment aforesaid these petitioners and others joined their respective posts.

2. On the 26th June, 1984, the Registrar, Co-operative Societies, Patna, addressed a letter to the Executive Officer of the Bank, directing him to cancel all

the appointments made after 1st January, 1984. In view of the aforesaid directions given by the Registrar, Co-operative Societies, the Secretary of the Bank by a communication dated 6th March 1985 informed the petitioners and others that their salary cannot be paid because their services stood terminated by the order of the Registrar, Co-operative Societies. Nineteen persons out of the appointees aforesaid filed a writ application (C.W.J.C. No. 2002 of 1985) before this Court making a grievance that the Registrar, Co-operative Societies, had no authority to direct the Bank to terminate the services of those petitioners. That writ application was allowed on the 24th May, 1985, by a Bench of this Court, which held that under the Bihar and Orissa Co-operative Societies Act (hereinafter referred to as "the Act") the Registrar, Co-operative Societies, had no authority to direct the Bank to terminate the services of its employees. This Court quashed the aforesaid direction of the Registrar, Co-operative Societies, dated the 26th June 1984, as well as the communication dated the 6th March, 1985, issued by the then Secretary of the Bank to the petitioners and others.

3. It may be mentioned that on the 21st May, 1985, the Board of Directors of the Bank in question was superseded and the Deputy Commissioner, Deoghar, was appointed as the Special Officer to manage the affairs of the Bank. The Special Officer on 28th May, 1985 passed an order again terminating the services of the 43 appointees, including the petitioners. The Bank also filed a SLP (S.L.P. No. 9695 of 1985) before the Supreme Court for setting aside the aforesaid judgment of this Court dated the 24th May, 1985, in C.W.J.C. No. 2002 of 1985. That SLP was rejected by the Supreme Court on the 10th October, 1985.

4. There is no dispute that after rejection of the SLP the Deputy Commissioner-cum-Special Officer, reinstated 19 persons who were petitioners in C.W.J.C. No. 2002 of 1985. When others were not reinstated to their original posts, they filed writ applications before this Court. The writ application (C.W.J.C. No. 361 of 1986) was filed on behalf of the nine such appointees, C.W.J.C. No. 375 of 1986 was filed on behalf of two appointees, and C.W.J.C. No. 1043 of 1986 was filed on behalf of five such appointees. In those writ applications a prayer was made to quash the aforesaid order dated the 26th June, 1984, passed by the Registrar, Co-operative Societies, as well as the order dated the 28th May, 1985, passed by the Deputy Commissioner-cum-Special Officer again terminating the services of the 43 appointees, including the petitioners of those writ applications.

5. Out of three writ applications, two applications, C.W.J.C. No. 361 of 1986 and C.W.J.C. No. 375 of 1986, were disposed of on the 31st January, 1986 by a Bench of this Court (of which N.P. Singh, J. was a party) after hearing counsel for the petitioners and Mr. Kamla Pati Singh for the State. The Special Officer of the Bank was directed to consider the representation of the petitioners of those writ applications for reinstatement on the ground that 19 others similarly situated had been reinstated after the direction given in C.W.J.C. No. 2002 of 1985, as mentioned above. The third writ application (C.W.J.C. No. 1043 of 1986) was listed for hearing before a Bench presided over by the then Chief Justice, (Mr.

Justice S.S. Sandhawalia). That writ application [Sheo Shankar Prasad Sinha (1987 PLJR 270)] was allowed on the 11th September, 1986. The Bench after referring to the earlier judgments of this Court, specially C.W.J.C. No. 2002 of 1985, came to the conclusion that the Registrar, Co-operative Societies, had no authority to direct the Secretary of the Bank to terminate the services of the appointees aforesaid. The Bench also quashed the order dated the 28th May, 1985, aforesaid passed by the Special Officer terminating the services of the aforesaid appointees holding it to be invalid, because from the face of that order also it appeared that the services of the appointees had been terminated primarily on the direction given by the State Government; as such, that order also suffered from the same vice which had been pointed out earlier by this Court in respect of the order dated the 6th March, 1985. This Court, however, observed that it will be open to the Special Officer of the Bank to consider as to whether the services of those appointees should be terminated in accordance with law.

6. It may be pointed out that from the judgment of this Court in C.W.J.C. No. 1043 of 1986, it does not appear that the attention of the learned Judges was drawn to the order passed by this Court on 31.1.1986 in the aforesaid two writ applications, C.W.J.C. No. 361 of 1986 and C.W.J.C. No. 375 of 1986, in connection with the 11 petitioners, directing the Special Officer to consider their representation, but the order dated the 28th May, 1985, terminating the services of the petitioners of those writ applications was not quashed.

7. It appears that pursuant to that direction given in the aforesaid two writ applications, the Special Officer purported to consider the representation filed on behalf of the 11 petitioners and by the impugned communication dated the 7th June, 1986, he has rejected the same saying that it was not possible to allow those petitioners to join their services. This Court, as already mentioned above, allowed the third writ application (C.W.J.C. No. 1043 of 1986) on the 11th September, 1986, that is, after the impugned communication dated the 7th June, 1986, was passed by the Special Officer rejecting the representation of the 11 petitioners. It may be pointed out that now in view of the judgment passed by this Court in C.W.J.C. No. 1043 of 1986 quashing the order dated the 28th May, 1985, by which the services of 43 appointees were again terminated by the Special Officer, an anomalous position has arisen, that is, whereas in respect of the same relief this Court in C.W.J.C. No. 361 of 1986 and C.W.J.C. No. 375 of 1986 in respect of 11 appointees had only directed the Special Officer to consider their representation without quashing the order dated the 28th May, 1985, aforesaid, in the third writ application (C.W.J.C. No. 1043 of 1986) filed on behalf of five persons that order dated the 28th May, 1985, was quashed by this Court.

8. Mr. M.S. Madhup, the learned Standing Counsel appearing on behalf of the State pointed out that the principle laid down in the case of Bipin Prasad Singh and 18 others (C.W.J.C. No. 2002 of 1985) should not be applied to cases where the Managing Committee of the Co-operative Society in question has been

superseded in accordance with section 41(1) of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as "the Act") and a Special Officer has been appointed to manage the affairs of such societies. According to the learned Standing Counsel, in that event, the State Government can issue directions from time to time for proper management of the affairs of the society. He further pointed out that, in the present case, the managing committee of the society had been superseded and a Special Officer took charge on 21.5.1985 as such the Special Officer could have issued the impugned order of termination Dated 28.5.1985 on the directions of the authorities of the State. He also drew our attention to the aforesaid judgment of this Court in the case of Sheoshankar Prasad Sinha and others v. The State of Bihar and others (1987 PLJR 270) and submitted that the attention of the learned Judges was drawn to section 66B of the Act but not to section 41(2) of the Act and as such the scope of section 41(2) was not considered while quashing the aforesaid order dated 28.5.1985 in that case.

9. The relevant part of sub-section (2) of section 41 is as follows:--

41(2) When a managing committee is dissolved under sub-section (1), the Registrar shall appoint person or persons on such remuneration, if any, as he may fix, to carry on the business of the society, and such person or persons shall, subject to any direction issued by the Registrar from time to time, exercise all the powers and perform all the duties which may under this Act, the rules and the by laws, be exercised or performed by the managing committee or any officer of the society;

10. On a plain reading of sub-section (2) of section 41 of the Act it appears that when a managing committee is dissolved under subsection (1) of section 41, the Registrar has to appoint a person or persons to carry on the business of the society who have to exercise all the powers and perform all the duties under the provisions of the Act and the Rules to be performed by the managing committee "subject to any direction issued by the Registrar from time to time". There is much force in the contention of the learned Standing Counsel that the situation while the managing committee of a co-operative society is under supersession shall be different than when it is not under supersession, because once the managing committee of any society is under supersession any person who is appointed as a Special Officer has to exercise powers to manage the said society, subject to any direction issued by the Registrar from time to time. As such if the order of termination had been passed on the direction of the Registrar by the Special Officer on 28.5.1985, then the principles enunciated in the judgment of this Court in the case of Bipin Prasad Singh and 18 others (C.W.J.C. No. 2002 of 1985) aforesaid was not applicable. There is no dispute that on 26.6.1984, when the direction was issued to the Co-operative Society in question, which was under challenge in that writ application, the Co-operative Society had not been superseded. Similarly, in the case of Binod Kumar Singh and others (C.W.J.C. No. 4112 of 1983 disposed of on 12.1.1984, it has been held that even the Registrar

cannot direct a Co-operative Society to terminate the services of the employees of the Society. But, in that case also, as the Society in question had not been superseded, there was no scope for exercise of power u/s 41(2) of the Act.

11. But on 28.5.1985 when the impugned order of termination was issued admittedly Society was under supersession. However, the difficulty is that in the order dated 28.5.1985 itself, it has been mentioned that the services of the petitioners were being terminated, in view of the letter dated 14.5.1984 issued by the Under Secretary, Co operative Department. It need not be pointed out that even if it is held that the Registrar can issue any such direction during the period of supersession of a Co-operative Society to the Special Officer of that Society, no other Officer of the Cooperative Department can issue any such direction; section 41(2) of the Act vests power in the Registrar only to issue direction from time to time during the period of supersession. As such even if in the case of Sheoshankar Prasad Sinha and others (*supra*), the attention of the learned Judges would have been drawn to section 41(2) of the Act, still the order dated 28.11.985 had to be quashed because that could not have been saved u/s 41(2) of the Act having been issued by an Officer other than the Registrar, Co-operative Society.

12. It was then submitted on behalf of the respondents that in view of the decision of this Court in the case of Harender Narain Banker Vs. The State of Bihar and Others, , no writ can be issued on the Managing Committee of a Co-operative Society which shall not be deemed to be a State within the meaning of Article 12 of the Constitution. It appears that this aspect of the matter was also not considered by the Bench in the case of Sheoshankar Prasad Sinha and others (*supra*). But, as the impugned order dated 28.5.1985 has been passed by a Special Officer appointed by the Registrar, Co-operative Societies, after the supersession of the Cooperative Society, in my view, there is no necessity of considering that aspect of the matter, in detail. According to me the principle laid down by a Bench of this Court in the case of Harender Narain Banker (*supra*) shall not be applicable when the Managing Committee of a Co-operative Society has been superseded and a Special Officer has been appointed by the Registrar to manage the affairs of such Societies. The Special Officer has to be held to be an Authority within the meaning of Article 12 of the Constitution who shall be amenable to the writ jurisdiction of this Court.

13. In this background it is difficult now to uphold the aforesaid order of the Special Officer dated the 7th June 1986 (Annexure 10) I have already pointed out that the said order had been passed on the assumption that the services of those 11 petitioners stood validly terminated by the aforesaid order dated the 28th May, 1985, and the only question was whether that order should be recalled by the Special Officer so that the petitioners of those writ application may re-join. Now there cannot be any dispute that the order dated the 28th May, 1985, has been held to be invalid in C.W.J.C. No. 1043 of 1986 by this Court which judgment has become final, as no appeal appears to have been filed before the

Supreme Court. Once the order dated the 28th May, 1985, stands quashed, then there is no question of considering whether the 11 petitioners of the other two writ applications, that is, C.W.J.C. No. 361 of 1986 and C.W.J.C. No. 375 of 1986, should be allowed to join or not. It will be deemed that they have continued in service of the Bank and there is no order of termination.

14. Under the circumstances mentioned above I allow this application and quash the order dated the 28th May, 1985, (Annexure 4 to the writ application) so far as the petitioners are concerned. I also quash the order dated the 7th June, 1986 (Annexure 10). It is, however, made clear that it will be open to the Bank or the persons in the management of the Bank to apply their independent mind on the question in respect of the termination or continuation of the different appointees in the service of the Bank in accordance with law. In the circumstances of this case there will be no order as to costs.

D.K. Sen, C.J.

I agree.