

(1984) 03 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 150 of 1984

Narain Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1985 Patna 9 : (1985) PLJR 579

Hon'ble Judges : Ram Chandra Prasad Sinha, J

Bench : Single Bench

Advocate : A. Bose, Kaushal Kumar and S.P. Gupta, for the Appellant; K.P. Verma, General, Rameshwar Prasad, Govt. Pleader, Tarakant Jha, Yogendra Mishra, Mangal prasad Mishra and Ganpati Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Ram Chandra Prasad Sinha, J.—The seven petitioners claiming themselves to have been elected as office bearers and members of the Managing Committee of the Narkatiaganj Co-operative Development and Cane Marketing Union Limited (to be referred to as "the Society" hereinafter) in the Annual General Meeting of its delegates held on 27-12-1983 under the presidentship of Singheshwar Prasad Verma (respondent No. 19) have filed this writ application under Arts. 226 and 227 of the Constitution of India for quashing the decision of the Registrar, Co-operative Societies, Bihar (respondent No. 2) contained in letter No. 99 dated 4-1-1984, written by him to the District Magistrate, West Champaran, Bettiah (respondent No. 3) giving approval of the resolutions passed in the said meeting held on 27-12-1983 under the presidentship of Krishna Kumar Mishra (respondent No. 11) and requesting him to act accordingly, a true copy whereof has been annexed and marked Annexure 1 to this writ application. In Annexure 1, it has been mentioned that the annual general meeting held under the presidentship of respondent No. 11 is legal and the assertion of Singheshwar Prasad Verma (respondent no. 19) that he had completed the proceeding of the

annual general meeting before 9.30 A.M. on 27-12-1983 does not inspire confidence.

2. The last annual general meeting of the election of the office bearers and members of the Managing Committee of the Society in which respondent Nos. 19 and 17 were elected as Chairman and Honorary Secretary respectively having been held on 30-12-1980, the term of the Managing Committee was expiring on 31-12-1983 and hence 5-10-1983 was the date fixed for holding the annual general meeting of the Society and for election, but before the holding of the meeting a dispute was raised before respondent No. 2, who, after hearing the parties, stayed the holding of the election on 5-10-1983 and directed that the election should be held after the disposal of objections relating to the delegates of the Society which were disposed of by the Assistant Registrar and Deputy Registrar, Muzaffarpur, and again 14-11-1983 was fixed as the date for holding of the election, but persons aggrieved by the decisions given by the Assistant Registrar and Deputy Registrar preferred an appeal before respondent No. 2 who refused to stay the holding of the election. Thereafter one of the delegates filed revision u/s 65-A of the Bihar and Orissa Cooperative Societies Act, 1935 (to be referred to as "the Act" hereinafter) before the Minister, Co-operation, who, after hearing, passed an order on 9-11-1983 and stayed the holding of the election, which order was also challenged by Shri Shankar Singh (respondent No. 7) in this Court in C. W. J. C. No. 5387 of 1983. This Court passed an order on 2-12-1983 directing respondent No. 2 to hear the matter on 5-12-1983 and pass orders as soon as possible. The respondent No. 2, in accordance with the direction of this Court, after hearing the parties, disposed of the matter by his order dated 5-12-1983, which was also challenged by respondent No. 7 and one Shamsul Hoda in this Court in C. W. J. C. 5710 of 1983 which was dismissed in limine by order dated 16-12-1983. Thereafter 27-12-1983 was fixed for holding annual general meeting of the Society and election of the office bearers and members of the Managing Committee under the orders of respondent No. 2 and the Minister, Co-operation. The meeting was directed to be held under the presidentship of respondent No. 19 and in accordance with the provisions of rule 21 of the Bihar Co-operative Societies Rules, 1959 (to be referred to as "the Rules" hereinafter). Respondent No. 2 had also appointed respondent No. 3 to be an observer of the said meeting. According to the programme, the meeting was to be held in the premises of Smt. Matisara Kuer Balika Uchcha Vidyalaya at 9 A.M. As the District Magistrate (respondent No. 3) was otherwise busy, he deputed the Additional District Magistrate (Supply), Bettiah (respondent No. 4) to act as an observer of the said meeting. According to the scheduled programme, the meeting commenced at 9 A.M. on 27-12-1983 under the presidentship of respondent No. 19. So far, there is no controversy between the petitioners and the contesting respondents 7 to 18 and 20 as well as respondent No. 19.

3. According to the case of the petitioners and respondent No. 19, the meeting which started at 9 A.M. continued up to 10.30 A.M. Till then neither the

Additional District Magistrate nor the District Co-operative. Officer had come there. 22 delegates out of total number of 42 delegates attended the meeting which commenced at 9 A.M. under the presidentship of respondent No. 19 in which the petitioners were elected as office bearers and members of the Managing Committee. Shri Narain Mishra, petitioner No. 1, was elected as the Chairman, The newly elected members took over charge of the Society and started functioning. Shri Shankar Sharan Singh, respondent No. 7, who was the ex-Secretary of the Society, did not like that the meeting should be held under the presidentship of respondent No. 19, left the meeting with his groupmen who were 20 in number including himself and manufactured the proceedings of the meeting. He brought the Additional District Magistrate in his collusion and got a report made to the District Magistrate to the effect that when he reached, respondent No. 19 informed him that the meeting was over and the election had already taken place and saying this he left the meeting. Thereafter the meeting started under the presidentship of Krishna Kumar Mishra (respondent No. 11) under Rule 21(2) of the Rules in which different sets of persons were elected as office bearers and members of the Managing Committee. On the basis of his aforesaid report, the District Magistrate sent a report to the Registrar, Co-operative Societies, Bihar, mentioning therein that two groups of persons claimed to have been elected as office bearers and members of the managing committee. The petitioners claimed to have been elected in the meeting held under the presidentship of respondent No. 19, whereas the respondent Nos. 7 to 18 claimed to have been elected in the meeting held under the presidentship of respondent No. 11 and both of them attempted to enter the office and hence there was tension and he requested him to recognise and approve any of the aforesaid meetings and thereafter the persons elected in the meeting approved by him (respondent No. 2) would be allowed to enter the office and till the order was received, none of the persons of the aforesaid two groups would be allowed to enter. A true copy of the said report is Annexure 6 to the writ application. Thereafter respondent No. 2 sent the letter to the District Magistrate stating therein that the meeting held under the presidentship of respondent No, 11 and the resolutions passed in the aforesaid meeting should be recognised. A true copy of the letter is Annexure 1, as stated above.

4. The case of respondent Nos. 7 to 18 and 20 is that the annual general meeting started from 9 A.M. but the petitioners started creating trouble and ultimately the election did take place in accordance with the provision of law in presence of the Additional District Magistrate and the District Co-operative Officer Bettiah, in which respondent Nos. 7 to 18 were elected as the members of the managing committee which took over charge and started functioning. They also claimed to have made; transaction of more than 20 lakhs with different agencies.

5. Respondent No. 19 has supported the case of the petitioner by filing counter-affidavit and supplementary affidavit.

6. Counter-affidavit has also been filed on behalf of the Registrar, respondent No. 2, denying the allegation and insinuations made against him and the Chief Minister specially in paragraphs 32 and 33 of the writ application. It has also been stated in the counter-affidavit that he acted and discharged his duties in administrative capacity in writing the impugned Annexure 1 to respondent No. 3.

7. Learned Advocate General appearing on behalf of respondents 1 and 2 challenged the maintainability of the writ application mainly on the ground that the allegations of mala fide made against the Chief Minister cannot be considered and enquired in his absence. Thereupon Mr. A. Bose, learned counsel appearing for the petitioners, stated that he was withdrawing the allegations and insinuations made against the Chief Minister and thereafter he filed supplementary affidavit withdrawing the allegations made in paragraphs 32, 33 and 34 of the writ application, which, under the orders of this Court, form part of the main writ application. Although various other facts have been stated in the affidavits, counter-affidavits, rejoinder and replies filed on behalf of the parties, it is not necessary for the disposal of this application to state the details given therein.

8. The only question which falls for consideration and decision by this Court in this application is as to whether the order contained in Annexure 1 is illegal, invalid and without jurisdiction. Learned counsel appearing on behalf of the petitioners has contended that the order is entirely illegal and without jurisdiction as the Registrar has got no jurisdiction to pass an order like this in his administrative capacity and that too without giving any opportunity to the petitioners and other interested person either to show cause or of hearing them. According to his contention, Annexure 6 amounts to making a reference of election dispute u/s 48 of the Act and on receipt of it the Registrar should have proceeded under any of the clauses under Sub-section (2) of Section 48 of the Act. The petitioners having been elected as office bearers and members of the managing committee of the Society at the annual general meeting held on 27-12-1983 under the presidentship of respondent No. 19 have been deprived of their right of managing the affairs of the Society by Annexure 1 without giving any notice or opportunity of hearing them.

9. On the other hand, learned Advocate General has contended that the Registrar in his administrative capacity is quite competent to pass order contained in Annexure 1 and the said order cannot be challenged by any person.

10. Mr. Tara Kant Jha, learned counsel appearing on behalf of respondent Nos. 7 to 18 has, however, contended that the impugned order may be without jurisdiction, but by passing that order the respondent No. 2 has merely said that the respondent Nos. 7 and others were elected at the meeting held on 27-12-1983 under the presidentship of respondent No. 11. The basis of right of respondent Nos. 7 and others is not Annexure 1, rather their election in the annual general meeting held under the presidentship of respondent No. 11. It has also been submitted on his behalf that on the basis of the aforesaid election

the aforesaid respondents entered the office and began to discharge the function but on account of wrong interpretation given by the District Magistrate of the order of stay passed by this Court at the time of issuing rule in this case which runs thus. "In the meantime the operation of Annexure 1 shall remain stayed.-- which necessarily meant that the persons who were holding the office should not be disturbed and restrained, respondent Nos. 7 and others were restrained from entering the office and the petitioners were put in the office. He prayed that they should again be installed in the office to discharge their function.

11. In Annexure 6, respondent No. 3 has mentioned that according to the programme the annual general meeting and the election were held at 9 A.M. but the Additional District Magistrate (Supply), the observer appointed by him, reached the venue at 9.30 A.M. and on his arrival, respondent No. 19 informed him that the proceeding of the meeting which started at 9 A.M. was completed and thereafter he left the place. It has also been mentioned therein that, on the other hand, the other meeting of the Honorary Secretary and his persons was held under the presidentship of respondent No. 11. The proceedings of both the meetings were submitted to respondent No. 2 by respondent No. 3. On the basis of Annexure 6, the proceeding books and reports of respondent No. 3, respondent No. 2 decided that the meeting held under the presidentship of respondent No. 11 and the resolutions passed therein were valid and should be recognised. From a perusal of Annexure 6 and Annexure 1 it is clear that the proceedings of the two annual general meetings, one held under the presidentship of Chairman (respondent No. 19) and the other held under the presidentship of respondent No. 11, were very much before the Registrar and the claims and counter-claims of the petitioners and respondent No. 7 and others were before him. It is also clear that two versions running counter to each other were before him. In this situation he should have decided the matter after giving opportunity of hearing to all the persons concerned and should not have passed the order Annexure 1 in this manner. The effect of this order is that the petitioners have been deprived of their right to run the administration of the Society to which they were entitled according to the claim made by them. Even if it is assumed that respondent No. 2 passed this order in his administrative capacity, he was not entitled to do it in this manner, i.e. without giving any opportunity to the petitioners of hearing them or showing cause. This view also gets support and strength from bye-law 40 of the Society published at page 126 of the Bihar Co-operative Societies Manual, Volume III (Govt. Publication, 1967) which empowers the Registrar to rescind the resolution and proceeding of the Society or the Managing Committee or its any officer after giving opportunity of hearing to the concerned parties. This order having been passed without giving opportunity of hearing to the petitioners and other concerned persons is not fit to be sustained and is illegal.

12. The second aspect which has to be considered is whether the dispute which appears from Annexure 6 was or is an election dispute and it would amount to a reference made to the Registrar u/s 48 of the Act. From Annexure 6 it is very

clear that in two annual general meetings claimed to have been held, different sets of persons were claiming to have been elected as office bearers and members of the managing committee and hence there cannot be any doubt in holding that there was election dispute between the petitioners on one hand and respondent No. 7 and others on the other. Law stands well settled that an election dispute is also a dispute touching the business of a registered society within the meaning of Section 48 of the Act and for this purpose the case of Pandit Raghav Jha v. Registrar, Co-operative Societies, Bihar ILR 1962 Pat 325 may be referred to. This case relies upon a Full Bench decision of Madras High Court in M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, where more or less similar provision, like Section 48 of the Act, was under consideration and it was held that the election dispute is also a dispute touching the business of a registered society which can be decided u/s 48 of the Act. The cases of Abdul Gafoor and Others Vs. State of Bihar and Others, and Raghav Jha Vs. Registrar, Co-operative Societies, Bihar and Others, also support the aforesaid view.

13. Now, the other question to be seen is whether that Annexure 6 will amount to a reference made to the Registrar under the aforesaid section.

14. On the basis of Rule 68 of the Bihar Co-operative Societies Rules, 1959, it has been contended on behalf of the contesting respondents that Annexure 6 cannot be treated as letter of reference u/s 48 of the Act and it cannot be said that reference of an election dispute has been made to the Registrar, because according to them, under Rule 68(1) reference may be made by the managing committee of the registered society interested in the dispute or by any party to the dispute or by the member of the society if the dispute relates to the society from a member of, the managing committee and in the present case the dispute having not been referred to either by the managing committee of the society or by any party to the dispute or by any of its members as contemplated by rule 68(1)(a) and (b) of the aforesaid Rules, it cannot be said that reference regarding election dispute was made to respondent No. 2 and that there were two election disputes before respondent No. 2. In this regard Sub-rule (13)(a) of Rule 68 is to be considered which reads as follows : --

"(13)(a).-- Reference of a dispute to the Registrar shall be made in Form No. XII, application for decision shall be made in Form No. XIII, notices to parties shall be issued in Form No. XIV and summons shall be issued in Form No. XV."

From the perusal of different forms it is clear that no particular form has been prescribed for making reference of election dispute to the Registrar and hence it cannot be said that Rule 68 is exhaustive and the reference has to be made only in the forms and by the persons prescribed by the said rule. By Section 48 of the Act no method or by whom the reference has to be made has been prescribed. But, as it has been stated above, it has been held that election dispute is also a dispute within the meaning of Section 48 of the Act. In the circumstances, it cannot be said that if the reference has not been made by any of the persons

mentioned in Rule 68, it will not be a reference because Rule 68 will not and cannot control the meaning and scope of Section 48 of the Act. In the case of Pandit Raghav Jha ILR (1962) Pat 325 (supra) it has been held as follows : --

"The rules cannot control the meaning of the section. If there is any ambiguity, help may be taken from the rules. Simply because the Government of Bihar in the year 1959 prescribed one form only which can cover one kind of dispute, it cannot be held that other kinds of dispute envisaged by Section 48 of the Act thereby had been excluded from the operation of that section. To illustrate, I may specifically refer to clause (c) of Sub-section (1) of Section 48 which provides for the reference of dispute between society or its managing committee and any past or present officers, agent or servant of the society without limiting it to the financial dispute. It could not be disputed that even the dispute regarding the dismissal of an officer of the society will be a dispute "between the society" and the "officer" touching the business of the "registered society". This obviously is not covered by Form 12."

Therefore, in my opinion, the District Magistrate can make a reference of an election dispute to the Registrar and the reference made by respondent No. 3 was the reference made u/s 48 of the Act though it was not made by the persons mentioned in Rule 68(1)(a) and (b) of the Rules. It cannot limit the scope of Section 48 of the Act.

15. On receipt of the reference from respondent No. 3, respondent No. 2 should have proceeded in accordance with Section 48(2) of the Act and not to decide the dispute in the manner he has done by Annexure 1.

16. Both parties have placed reliance upon Sub-rule (2) of Rule 22 which says that the members of the managing committee and office bearers shall be deemed to have taken over charge immediately after their election and shall hold office till the next, election and have contended that after their election they assumed the office. It has been contended on behalf of respondent No. 7 and others that after their election, they discharged the function as office bearers and members of the managing committee and they should not have been disturbed and put out of office on wrong interpretation of the order of stay passed by this Court. They have also given some illustration to show that they have actually functioned. On the other hand, the petitioners have also vigorously contended that the illustrations given by them would not prove that they discharged their functions as the office bearers of the managing committee alleged to have been elected in the meeting held on 27-12-1983; rather they were old office bearers and if they discharged any such function they did it as old office bearers elected in the annual general meeting held on 30-12-1980 and not as office bearers elected in the meeting held on 27-12-1983.

17. On consideration of the aforesaid facts and circumstances I hereby hold that the order contained in Annexure 1 is illegal and fit to be quashed.

18. In the result, the application is allowed and Annexure 1 is quashed and the

matter is sent back, to respondent No. 2 who will treat Annexure 6 as a reference made to him u/s 48 of the Act of an election dispute and proceed to deal with and dispose of the same in accordance with law. The dispute should be decided as expeditiously as possible preferably within three months from the date of receipt of a copy of this order. The petitioners and all the concerned respondents are directed to appear before respondent No. 2 within ten days from today and no notice should be issued to any of them. Till the matter is decided in the manner stated above," none of the persons claiming to have been elected as office bearers and members of the managing committee either in the meeting presided over by respondent No. 19 or by respondent No. 11 should be allowed to run the business and administration of the Society and the Registrar, respondent No. 2, will appoint a Special Officer or Officers to run the business and administration of the Society in the meantime. In the circumstances of the case there will be no order as to costs.