
(2007) 10 PAT CK 0040
In the Patna High Court
Case No : CWJC No. 1609 of 2007

Narendra Kumar	Vs	APPELLANT
The State and Others		RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Citation : (2008) 2 PLJR 197

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ram Suresh Roy and Arvind Kr. Singh, for the Appellant; Pashupati Pd. Sinha and Devendra Pd. Singh for Respondent No. 5 and J.C. to G.P. 9 for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—I.A. No. 3489/07 has been filed to add four persons as petitioners. It is stated that during the pendency of this writ petition the final order was passed on 6.6.07/ 7.6.07 (Annexure 17). This was impugned by I.A. No. 3488/07. By this order continuance of four other persons as well, apart from the petitioner, as member was cancelled by the Registrar. Thus, by the second interlocutory application the remaining persons have also joined challenging this Annexure 17. As Annexure 17 is a common order in respect of all persons they have to be permitted to join in this writ petition. I.A. No. 3489/07 is accordingly allowed.

2. State has not filed any counter affidavit.

3. Respondent No. 5, the Managing Director, Nawadah Central Co-operative Bank Limited has appeared and filed a counter affidavit. It is at his instance that the impugned order has been passed.

4. Heard the parties and, with their consent this writ petition is being disposed of at the stage of admission itself.

5. Mr. Ram Suresh Roy, learned senior counsel appearing on behalf of the petitioners (one original petitioner and four added by I.A. No. 3489/07) has challenged Annexure 17, being the order of the Registrar, Co-operative Society on the ground that the five persons disqualified by the said order, could not be so disqualified as the only remedy against them was election petition. So far as member of the Nawadah Central Co-operative Society Bank are concerned, it could be challenged by an election petition. As no such challenge having been made, after three years of election, the matter cannot be taken up now. For this reliance has been placed on a Division Bench judgment of this Court in the case of Vijay Kumar Mishra vs. State of Bihar & Ors. since reported in 1989 PLJR 846. On the other hand, on behalf of respondent No. 5, it is submitted that as all five petitioners were ineligible, the Registrar, Co-operative has rightly cancelled their memberships.

6. In terms of Bihar Co-operative Societies Act and the Bihar Co-operative Rules and in particular Rule 21 series clearly indicate that there shall be election of various members of the Co-operative Society. Rule 8 read with Rule 23 thereof provides for persons disqualified from stand for election. They are, inter alia, the persons, who are members of any other Cooperative Society, which is in default. Rule 24 mentions that a member of the Managing Committee shall cease to hold office if he incurs any disqualification as mentioned in Rule 8 or Rule 23. In my view, this rule presupposes a valid election but subsequent acquisition of disqualified. Similarly, Rule 25 of the rules is in two parts. One dealing with eligible for election and the other disqualification subsequent to election.

7. I am pointing this distinction to show that disqualification can subsequently be acquired. There can be a disqualification prior to election itself. If a person is disqualified then it is his nomination that has to be rejected or his election can be challenged by way of election petition. There is no other method prescribed either under the Act or the Rules to confer any jurisdiction or any authority to remove a person duly elected even though he was not entitled to get elected. The only purpose is by way of election petition and this what has been held in the case of Vijay Kumar Mishra (supra).

8. Now the question is what was the status of the five petitioners. So far as petitioners Narendra Kumar, Nawal Kishore Prasad Singh and Bangali Paswan are concerned, they are co-opted members. So far as Kavindra Deo and Shanti Devi are concerned, they were elected members.

9. So far as co-opted members are concerned, they are co-opted in terms of Rule 21 (P) of the rules by the elected members. Thus, for all practical purposes, they are to be treated as members. It is for this reason that under the Act or the Rules there is no other separate provision for challenging the validity of their co-option. If they are treated as elected members then the provision applicable to elected members would apply and their co-option could be challenged in an election petition. Thus, it would be seen that it is with regard to elected and co-opted members, the validity of their election including on the ground of

ineligibility can be a subject matter of challenge by way of an election petition. If that be so then in terms of Division Bench judgment referred to above, validity of their memberships of the Managing Committee could not be assailed except by way of election petition.

10. Here, the only ground on which their memberships which included all five of them were members of Primary Agricultural Co-operative Society, who were defaulters at the time when election took place. They were, thus, ineligible to be nominated for election/co-option in terms of Rules 8 and 23. In other words, they suffered from a pre-existing disqualification at the time of election itself. It is not that having been co-opted or elected they acquired disqualification subsequently. In my view, as allegedly they were incompetent to be nominated or co-opted because of pre-existing disqualification, their election or co-option could only be challenged by way of election (Sic-petition?) as held by Division Bench aforesaid. They could not be unseated otherwise. Reading the provision otherwise would lead to duplication of power. The matter which is specifically specified to be dealt with in a special manner has to be dealt with accordingly and all other modes are prohibited. When the Act provided that a member, who suffered from a pre-election disqualification would not be nominated and his election could only be set aside by a election petition. If no such action was taken within the stipulated time, then no action could subsequently be taken. Here the election has taken place on 7.6.03 and co-option made soon thereafter. It was only in 2006 i.e. after three years these were sought to be challenged and that too not by way of election petition but by way of an application of the Managing Director of Nawadah Central Co-operative Bank. This in my view, was impermissible.

11. I accordingly have no option but to set aside the order, as contained in Annexure 17. Consequently Annexure 18 is also to be set aside as it is a consequential order and the Registrar, Co-operative Society would reconsider the matter in so far as supersession of the society is concerned considering that the election/nomination of petitioners cannot be questioned. This writ petition is allowed interms as indicated above.