

(1982) 03 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 320 and 417 of 1981

Nawal Kishore Prasad Sinha and etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 14

Citation : AIR 1983 Patna 8 : (1982) 30 BLJR 499 : (1998) PLJR 377 : (1982) PLJR 377

Hon'ble Judges : K.B.N. Singh, C.J;P.S. Sahay, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Kaushal Kumar, Kamalapati Singh, Rana Rabindra Kumar Singh and Ishwari Singh, for the Appellant; K.P. Verma, General, R.P. Sinha `Rajesh", J.C., Indu Shekhar Prasad Sinha, Yogesh Chandra Verma, Ajayendu Bose and R.N. Roy, Jr. Counsel to A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.S. Sahay, J.—Both these applications have been heard together and will be governed by this common judgment. In these applications prayer has been made to quash the order of the Registrar. Co-operative Societies who, in exercise of powers conferred u/s 14 (2) of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as the Act), has held that in view of stay order the term of the Board of Directors of the Bank has come to an end and the Board stand superseded with effect from 1-1-1981. In the meantime special officers were appointed for four months to look after the affairs of the Society and election was to be held on or before 30-4-1981 The aforesaid order is Annexure I in C. W. J. C. 320 of 1981 and Annexure-8 in the other writ application.

2. In order to appreciate the points it will be necessary to state some facts which is mentioned from C. W. J. C. 417 of 1981 which has been filed by the Secretary, Board of Directors and Patliputra Central Co-operative Bank Ltd. (hereinafter referred to as the Bank). C. W. J. C. 320 of 1981 has been filed by one of the

Directors of Bank. The last annual general meeting of the Bank was held on 28-9-1977 and Directors were elected in the aforesaid meeting, and their term was for three Co-operative years and this was to expire on 30-6-1980. They were, however, to continue in office till the fresh election or six months whichever is earlier. The extended period of six months was to expire on 31-12-1980. The preliminary general meeting of the Bank for the election of the delegates was held on two dates, 23-11-1980 and 24-11-1980, and 14-12-1980 was the date fixed for the annual general meeting for electing the Board of Directors for which notice was issued to the persons concerned. A copy of the same has been filed as Annexure-2 in C. W. J. C. 320 of 1981. On 2-12-1980 respondent No. 5 filed an application before the Joint Registrar pointing various irregularities in the preliminary general meeting held on the two aforesaid dates and that gave rise to dispute No. 17/1980. Intervener respondent No. 7. Dharmendra Prasad, on 11-12-1980 filed an application before the Minister, Co-operation, respondent No. 3, which was registered as Election Dispute Case No. 30 of 1980 and it was adjourned to the next day. The Minister by his order dated 12-12-1980 stayed the meeting which was to be held on 14-12-1980, a copy of the order is filed herewith and marked Annexure-3. The annual general meeting of the Bank was again adjourned to 30-12-1980 vide Annexure-4 for electing the office bearers. On 23-12-1980 one Rajeshwar Singh, one of the members of the Society, filed an application in this Court which was registered as C.W.J.C. No. 3235 of 1980 and it was adjourned to 8-1-1981 and it was ordered that in the mean time no election should be held; a copy of the order is Annexure-9. On 27-12-1980 respondent No. 3 in Election Dispute Case No. 30/1980 ordered that in view of the order passed by this Court on 23-12-1980 no election should be held: a copy of the order is Annexure-C in the counter-affidavit filed by intervener respondent No. 7. The annual general meeting of the Bank was held on 30-12-1980 in which Board of Directors were elected and also the office bearers, a copy of the proceeding is filed herewith and marked Annexure-5. On the following day (31-12-1980) copies of the proceedings of the meeting were sent to Registrar and others concerned and on the same day the meeting of the newly elected member of the Board of Directors was held in which some business was also transacted; a copy of the proceeding has been filed as Annexure-6. Another meeting was also held on 5-1-1981, Annexure-7. It is stated that the petitioners in C. W. J. C. 417 of 1981 went to the office and learnt that special officers have been appointed on 10-1-1981. Being aggrieved by the aforesaid order the petitioners have moved this Court for quashing Annexure-1 and Annexure-8 in the two applications.

3. C. W. J. C. 32G of 1981 was placed for admission on 2-2-1981 the operation of the order contained in Annexure-1 was stayed. Dharmendra Prasad filed an application for being impleaded as intervener respondent No. 7 and this Court by its order dated 21-4-1981 allowed the prayer. A petition was also filed on his behalf for vacating the order of stay and it was ordered on 5-5-1981 that the main application itself should be heard.

4. Counter-affidavits by respondent No. 7 and on behalf of respondents 1 to 5 have been filed in C. W. J. C. 320 of 1981 and also the reply to the counter-affidavit and the rejoinder thereto by the petitioner. But no counter-affidavit has been filed in C. W. J. C. 417 of 1981.

5. Mr. Balbhadra Prasad Singh, learned counsel appearing for the petitioners, has submitted that under the scheme of the Act read with the ordinance the Minister had no power to issue directions to the Registrar and, therefore, the orders passed on 10-1-1981 was wholly without jurisdiction. He has further submitted that the stay order passed by this court on 23-12-1980 could not operate to the prejudice as the elected delegates who had actually participated in the meeting on 30-12-1980 without having any knowledge of the aforesaid order. Lastly, it has been submitted that the order of the High Court was not in the nature of the injunction and it was just a wish of the High Court that no meeting should be held and even if there has been a violation of the order that could be dealt with under the provisions of the Contempt of Courts Act 1970 where a complete machinery was provided for. Learned Advocate-General, appearing on behalf of the State and respondent No. 3, has submitted that the meeting held after the stay order passed by this Court must be held to be non est. He has further submitted that the order of the Court was communicated to the Executive Officer and that will amount to sufficient notice to all the members and no individual notice was necessary. Regarding the nature of the order he has urged that a complete ban was put on the meeting and no other interpretation in this regard was possible. Sri Indu Shekhar Prasad Sinha, learned counsel appearing on behalf of the intervener respondent No. 7, has supported the stand taken by the learned Advocate General and has submitted that the Executive Officer of the Bank after having learnt about the order of this Court had informed all the persons concerned and in support of his contention has relied on his counter-affidavit. Annexure-D. It has further been urged by him that even if the election was held on 30-12-1980 it was void and in support of his contention has relied on the decision of *Mulraj Vs. Murti Raghonathji Maharaj*, . Mr. Bose appearing on behalf of the Bank has submitted that the Registrar had no power to pass the order as contained in Annexures 1 and 8 in the two applications because he had acted under the directions of the Minister who had no such powers u/s 65A of the Act. Further he has submitted that now that the election had taken place the remedy of the aggrieved person is to file an application u/s 48 of the Act and cannot get any relief by this Court,

6. From the facts mentioned in the application and the counter-affidavit filed on behalf of the respondents it is clear that the last annual general meeting of the Bank was held on 18-9-1977 and the term of the Board of Directors, which is three co-operative years, expired on 30-6-1980. u/s 14 (4) of the Act it could continue for six months which expired on 31-12-1980 or till the new election whichever is earlier. The relevant portions of Sections 14 (3) and 14 (4) may be usefully quoted.

"14. (3) Notwithstanding anything contained in the rules or the bye-laws of a registered society, the term of the members and the office-bearers of the managing committee of a registered society shall be three co-operative years, and they shall continue to hold office after expiry of their term till, the elections are held or for six months from the close of the co-operative year, whichever is earlier.

(4) If, for any reason, elections are not held within the said period after expiry of the term of the members and the office bearers of the managing committee, the committee shall be deemed to have been superseded with effect from the said date within the meaning of section 41, and thereafter the business of the society shall be carried on in the manner provided by the section.

Provided that irrespective of the date when the election is so held, the term of the members and the office bearers of the managing committee shall be deemed to have commenced from the beginning of the co-operative year in which the elections are held :

(Rest of the provisions are not necessary for this case.)

Section 41 (1) of the Act deals with the supersession of the managing committee and Section 41 (2) deals with the interim arrangement during the period of said supersession and reads as follows.

"41. Supersession of managing committee-- (1) If, in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society, he may, by order in writing after giving the managing committee an opportunity to state its objections if any, dissolve for any period not exceeding six months the managing committee and order that all or any of its members shall be disqualified from being elected to the managing committee of the society for a period to be specified in the order not exceeding three years :

Provided that the Registrar may from time to time extend the period specified in such order for further periods not exceeding one year at a time, and not exceeding in the aggregate, two years.

Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.

(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 bye-laws, be exercised or performed by the managing committee or any officer of the society".

Reading the aforesaid provisions it is thus clear that if no new office bearers

would have been elected before 31-12-1980 then the term of the old office bearers came to an end and Bank shall be deemed to be superseded with effect from 1-1-1981. The main controversy between the parties is regarding the holding of the meeting. According to the petitioners, the meeting was validly held on 30-12-1980 and new office bearers were elected which is disputed by the respondents that no meeting was held, and could not have been held in view of the order passed by this Court on 23-12-1980. Annexure-9, followed by the order of the Minister on 27-12-1980 in Election Dispute Case No. 30 of 1980. On a perusal of the order of the High Court respondent No. 3 save the following direction to the Registrar.

"The Registrar. Co-operative Societies, will make the necessary arrangements for management of the Bank as envisaged u/s 14 (4) of the Act. This is subject to any subsequent order passed by the Hon"ble High Court in the writ petition. This disposes of the petition."

On the receipt of the aforesaid order the Registrar passed the impugned order on 10-1-1981 which is under challenge. 7. Even if the meeting was held on 30-12-1988 as alleged by the petitioners, it was after the order of this Court on 23-12-1980 which runs as follows :

"Put up for admission on the 8th Jan. 1981 as prayed for on behalf of the State to enable learned counsel to obtain instructions.

In the meantime, no election should be held."

Our order is explicit and clear and we actually meant that no meeting should be held because the learned counsel appearing for the State wanted to take instructions in the matter. The order was passed after we were, prima facie, satisfied that there were good grounds for staying the meeting. Mr. Singh has contended that it was a mere wish and not a command. It is difficult to accept this contention if we really meant to leave the matter to the discretion of the parties concerned then we would have refrained from saying anything regarding the holding of the meeting. No doubt. C. W. J. C. 3235 of 1960, in which the stay order was passed, was withdrawn. That, in my opinion, will not make any difference so far the impact of our order is concerned. That petition was pending on the day when the meeting was held. Reliance has also been placed in the case of Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, where an appeal filed by the Revenue was withdrawn on certain conditions given by the assessee and it was held that even if proceeding was withdrawn settlement could be arrived at between the parties under the provisions of the I.-T. Act. I fail to understand how this decision help the petitioner and is not, at all, relevant for the points in issue. Withdrawal of a case at a later stage, in my opinion, will not obliterate the interim order passed earlier. It has been rightly contended on behalf of the learned Advocate-General and Shri Indu Shekhar Prasad Sinha that the meeting held after the stay order passed by this Court must be held to be non est. In the case of Mulraj Vs. Murti Raghonathji Maharaj,

a distinction between injunction and stay order has been very clearly explained. In matters of stay it will be effected from the time it is known to persons concerned. But any action taken in ignorance of such order can be rectified if it has caused injustice to any party. By setting aside the election held on 30-12-1980 we will be doing justice between the parties, even if it may be assumed for a moment that this order was not communicated to the persons concerned. In the case of Nawabkhan Abbaskhan Vs. The State of Gujarat, an order of externment was passed and a case was lodged in which the accused was acquitted by the trial court and the State preferred an appeal which was pending. In the meantime the order of externment was quashed by the High Court under Article 226 of the Constitution during the pendency of the criminal trial. A point was raised in appeal against acquittal that since the proceeding had been quashed and had become void ab initio there was no quit order in law and there was no offence. It was observed that an order which is void may be directly and collaterally challenged in legal proceedings. "An order is null and void if the statute clothing the administrative tribunal with power, conditions it with the obligation to hear, expressly or by implication. Therefore, if a competent court holds the order to be invalid or sets it aside it operates from nativity i. e. the impugned Act or order was never valid. As stated in American Jurisprudence, Vol. XXXVIII, page 504 "as act done in violation of injunction, even nullified, is to be deemed ineffectual and unavailable as to the purpose intended as though it had not been done". It may also be mentioned that in the counter-affidavit filed by respondent No. 7 it has been stated that information regarding the order of stay passed by this Court was given to the persons concerned by the executive officers and in this connection Annexure-D has been relied upon which is dated 29-12-1980. On the face of this document it is very difficult to accept that meeting was held on 30-12-1980 in complete ignorance of the stay passed by this Court. Be that as it may, any meeting held after the order passed by Us has to be completely ignored and the case law, referred to above, fully supports the Respondents.

8. Now I take up the submissions of Mr. Singh that even if there was a violation of the order, action has to be taken under the Contempt of Courts Act, 1971 which is a self contained Act and procedure has been laid down for violation of such orders which may amount to civil or criminal contempt. The inherent power of the High Court -- the argument continues -- puts a limit on the powers by requiring a trial of the issue and enjoins that no sentence can be imposed, unless the Court is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice. And in this connection reliance has been placed on some decisions which I will discuss later but at the very outset I must say the argument is wholly misconceived. The question of committal or non-committal under the Contempt of Court's Act is one of the discretion of the Court and can be exercised when this Court is fully satisfied that there has been deliberate attempt to flout the order of this Court. That will depend on the facts of each case, the nature of the order and the act

complained of. But without initiating a proceeding for contempt this Court can quash any order or proceeding done in disregard of such orders which may also tantamount to contempt, It is very difficult to accept this extreme proposition that the acts done in defiance of Court's order can only be dealt with under the Contempt of Courts Act where a complete machinery is provided for and in no other manner. The Act does not put any bar. By accepting this proposition this Court will have to, completely, ignore the illegal acts of the subordinate authorities and, I may hasten to add, this will lead to dangerous results. This Court, when confronted with such situation, has to exercise its power conferred under the Constitution and pass necessary orders to undo the wrong and to do justice between the parties. In the case of *P. A. Thomas and Company v. Mould* (1968) 2 QB 913 an order of injunction was passed and defendants restrained from divulging confidential informations. It was argued that in order to have a clear direction by the Court the plaintiff must allege, in clear terras, what he alleged to be confidential which he sought to be protected and if it was not done even if there was a violation plaintiff could not complain because of the vagueness created by him. But, in the instant case nothing was suppressed before this Court when the interim order was passed by this Court and therefore, that decision does not help the petitioners. In the case of *Delhi and London Bank Ltd. v. Ram Narain* ILR 1887 All 497 there was a money decree and certain properties were attached and the Bank by virtue of another decree, got the properties attached and sold. The decree-holder objected that the Bank had no claim over the properties which were attached by him and that was allowed. A suit was brought by the Bank against Ram Narain, the decree-holder, in which it was held by the trial court that after injunction no transfer of property could be made and, therefore, the Bank have no interest. The appeal was allowed and the matter went to the High Court where it was held that the subsequent mortgage and auction thereto was illegal and void and for the breach of the injunction, if any a separate procedure had been laid down. In this case for the breach of the order of this Court proceedings can be taken under the Contempt of Court's Act also and this Court in exercise of its powers, is competent to set aside anything done in violation of the order. *Kusuma Dei and Others Vs. Malati Bewa and Others*, was a case relating to temporary injunction where property was sold and it was held that the sale was not nullity and violation of the order can be dealt with under Order 39, Rule 2 Sub-clause (3). That was a case under the Civil P. C. where a complete procedure has to be followed and that cannot be applied to cases filed under writ jurisdiction. In a full bench case of the Orissa, *B.K. Misra Vs. Chief Justice, Orissa H.C.*, a departmental proceeding was started against a public servant against whom some charges were pending before the Court. It was argued that the departmental proceeding amounted to contempt of Court. That argument was repelled by his Lordship and it was held that institution and constitution of disciplinary proceeding in good faith did not obstruct or interfere with the course of justice in pending Court proceedings. The meeting which was held on 30-12-1980 cannot be said to be held in good faith and the members ignored the stay order passed by this Court. That may be a good defence, in case

contempt proceeding is started but actions taken by them in spite of the stay order, as I have said earlier, cannot be ignored or overlooked. Thus, argument of Mr. Singh on this point has to be rejected.

9. The order of the Registrar appointing the special officers for the interim period also cannot be assailed. Such powers are vested on him by the provisions of the Act and he has rightly exercised the same. The action of respondent No. 3 to giving direction to him in view of the order passed by this Court also cannot be said to be illegal and without jurisdiction. A dispute was pending before him and therefore, in my opinion, such directions can be given and has been rightly given on the facts and circumstances of this case. Thus, on a careful consideration of the points raised in this application the petitioners, in my opinion, have not been able to make out a case for interference by this Court.

10. Both the applications are accordingly, dismissed but, in the circumstances of the case, there will be no order as to costs. The special officers will now take necessary steps to hold the meeting of the Bank preferably within a period of four months from today.

K.B.N. Singh, C.J.

11. I agree.