

(2018) 04 PAT CK 0040

In the Patna High Court

Case No : Letters Patent Appeal No.1632 of 2017 IN Civil Writ Jurisdiction Case No.5204 of 2017

Niranjan Kumar

APPELLANT

Vs

Bihar State Milk Cooperative Federation Ltd. Through Its
Managing Director & Ors

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 41(1), 41(3), 41(6)

Citation : (2018) 2 PLJR 903

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : Division Bench

Advocate : Kamal Nayan Choubey, Ashish Giri, Raj Ballabh Pd.Yadav, P.K.Shahi, Senior, Vikas Kumar, Nikesh Kumar

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties.
2. The origin of the present appeal lies in an earlier writ application preferred by the Bihar State Milk Co-operative Federation Ltd. as well as by the Managing Director of Bihar State Milk Co-operative Federation Ltd., Patna (hereinafter referred to as "the Federation"). Their hands were forced because of an order dated 31.03.2017 passed by the Hon'ble Minister, Government of Bihar, Patna in Supersession Appeal No. 7 of 2016.
3. The Managing Director of the Milk Co-operative Federation in exercise of power under Section 41(1) and Section 41(3) of Bihar Co-operative Societies Act, 1935, dissolved the Managing Committee of Shahabad Dugdh Utpadak Sangh Ltd. (hereinafter referred to as "the Sangh") and appointed Shri Ramesh Kumar Mishra, General Manager, COMFED as Administrator. It was also directed that all decisions taken in respect of one,

Niranjan Kumar, the then so called Managing Director of the Sangh to be declared illegal.

4. The order of supersession was assailed by one, Nirmal Kumar Singh, who was said to be a Member of Shahabad Dugdh Utpadak Sangh. The core

issue before the Minister, while exercising power of appeal, was whether the supersession order passed against the Shahabad Society was legal or valid.

5. In a detailed order dated 31.03.2017, passed by the Minister, which was Annexure-1 to the writ application, while deciding the issue of supersession,

which he held to be bad, he went overboard and decided the appointment/absorption as well as continuance of Niranjan Kumar as Managing Director

of Shahabad Society to be valid. The reason for doing so given by the Minister is that manner of functioning of Niranjan Kumar was also one of the

reasons provided in the order of supersession.

6. The Milk Co-operative Federation and the Managing Director being aggrieved by the findings and declarations given by the Minister in the impugned

order, moved the Patna High Court in a writ application which was registered as CWJC No. 5204 of 2017. The petitioners, i.e. the Federation, who

are Respondent 1 and 2 to the present Letters Patent Appeal, urged and argued before the learned single Judge that they are not seriously contesting

the decision given by the Minister with regard to supersession, but the findings, which has been given by the Minister with regard to the status of Mr.

Niranjan Kumar, was totally uncalled for. It is their case that Niranjan Kumar was an employee of Vaishal Patliputra Dugdh Utpadak Sahakari Sangh.

He was sent on deputation to the Shahabad Dugdh Utpadak Sangh and his lien with the original employer was not terminated. No doubt, some effort

was made by Mr. Niranjan Kumar as well as the Shahabad Society to absorb and retain the service of Mr. Niranjan Kumar permanently, for which

certain deliberations and exercise had been done but with the kind of controversies and his conduct, the Federation decided to withdraw the services

of Niranjan Kumar and give him another responsibility or post and position. However, the Minister by exceeding his power under Section 41(6) of the

Bihar Co-operative Societies Act, 1935 entered into an area of adjudication by exercising powers not vested in him. The decision of the Minister,

which if read in entirety, gives an impression to this Court that it was not the

issue of supersession, which was of paramount importance, but the continuance of Mr.Niranjan Kumar and his absorption on the post of Managing Director, which was the core issue which needed to be adjudicated upon.

7. With the above declaration made by the Minister with regard to the status of Niranjan Kumar and his continuance being given a seal of approval

despite the decision of the parent department to recall him and give him posting, rightly gave a cause for the Federation to assail the order before the writ Court.

8. When the matter was earlier heard in detail by the learned single Judge, an order dated 07.04.2017 was passed. The learned single Judge in the hotly

contested matter did take note of the fact that the issue before the Honâ??ble Minister was the position of supersession and it was totally uncalled

for and unwarranted for the Minister to decide the issue of absorption and continuance of Niranjan Kumar on the post of Managing Director in the

Shahabad Milk Co-operative Society. Therefore, he passed an order of restraint so far as that part of the order of the Minister was concerned. The

learned single Judge taking note of the fact that the order of restraint will have a fall out on the interest of Niranjan Kumar, who was not a party to the

writ application initially, was impleaded as respondent No. 5.

9. The learned single Judge after hearing the parties decided to finally dispose off the writ application by a detailed order dated 18.08.2017, wherein he

held the order of the Honâ??ble Minister declaring the status of Mr. Niranjan Kumar to be unwarranted and uncalled for. He set aside the order of

the Minister dated 31.03.2017. Since the question of illegality of the supersession was given up by the writ petitioner, therefore, that aspect was not adjudicated and the order of the Minister to that extent remained operative.

10. An appeal, namely, L.P.A. No. 1632 of 2017 came to be preferred by Mr. Niranjan Kumar. Much arguments came to be made on behalf of the

learned senior counsel representing Mr. Niranjan Kumar as to how the order of the learned single Judge is required to be interfered with and how

serious prejudice has been caused to him by the observations made by the learned single Judge. He harped on the fact that when the earlier order

dated 07.04.2017 was passed by the learned single Judge he was not made a party and despite the same, an ex-parte order of stay was granted

against the finding in his favour by the Minister, therefore, any subsequent decision and adjudication made vide order dated 18.08.2017 will not cure the illegality committed initially.

11. This Court finds it strange as to why so much issought to be made out about the order of the learned single Judge where he very fairly refrained

from commenting upon the issue relating to the status of Mr. Niranjana Kumar either with regard to his absorption as a Managing Director in the

Shahabad Milk Cooperative Society or the order of recall of his service passed by the Managing Director and his new posting and assignment

provided to him. This was done with a purpose and object because the learned single Judge was conscious of the fact that the issue before the

Honâ??ble Minister was issue of supersession of the society and it was not a service appeal of Mr. Niranjana Kumar, who was not even a party in

the Supersession Appeal No. 7 of 2016. Obviously, the Minister, therefore, had transgressed his boundaries by going into merits of adjudication, which

was neither necessary nor fell within his jurisdiction, of exercise of power.

12. The decision, which had been taken by the Managing Director of the Federation with regard to the status of Niranjana Kumar, was an independent

cause of action and Mr. Niranjana Kumar had all the freedom and right to knock at the doors of the forum available to him. But the whole effort on the

part of Niranjana Kumar is to somehow hang on to the decision and observation of the Honâ??ble Minister and by a via-media by preferring the

present appeal, i.e. L.P.A. No. 1632 of 2017, to focus on the issue of his absorption, continuance as well as repatriation, which was not the issue for

adjudication either before the Minister or before the learned single Judge.

13. The learned single Judge, therefore, has rightly allowed Mr. Niranjana Kumar to assail all the decisions which may have been taken by the

Federation contrary to his interest and by refusing to comment upon the legality or otherwise. He has rightly held back his horses for the reason that

he did not want to create any prejudice either in favour of Mr. Niranjana Kumar or against the interest of the decision taken by the Managing Director

of the Federation.

14. Effort on part of the learned senior advocate representing Mr. Niranjana Kumar is to convert the forum of appeal into one where his issue should be

decided when it was not his case even before the learned single Judge that he

was willing to contest the issue relating to his absorption, continuance or repatriation, which was an independent cause.

15. In the totality, therefore, we do come to a conclusion that the Honâ??ble Minister had exceeded his jurisdiction by passing a decisive order in favour of continuance of Mr. Niranjana Kumar as a Managing Director of the Shahabad Milk Co-operative Society as well as holding his repatriation to be bad and such a decision, which exceeded the jurisdiction and power of the Minister, was rightly interfered with by the learned single Judge. We also opine that the learned single Judge vide order dated 18.08.2017 has allowed Mr. Niranjana Kumar all the freedom to assail the decisions taken by the Managing Director of the Cooperative Federation before the forum he chooses and he has also rightly observed that none of the observations made by any of the authorities, be it the Minister or be it the writ Court, will in any manner cause prejudice either in favour or against Mr. Niranjana Kumar.

16. We are of the opinion that the decision in relation to the status that Mr. Niranjana Kumar is an independent cause of action and the adjudication made in the writ application of the Bihar State Milk Co-operative Federation as well as the Managing Director of the said Federation can not be used to decide the status or otherwise of Mr. Niranjana Kumar on the basis of observation of the Honâ??ble Minister.

17. The appeal, therefore, is required to be dismissed as we do not find any infirmity in order dated 18.08.2017 passed in CWJC No. 5204 of 2017 by the learned single Judge. The dismissal of the appeal, however, will not come in the way of Mr. Niranjana Kumar assailing the decision of the Managing Director of the Federation before the forum he chooses to do so. To belie any kind of misgivings, which the learned senior advocate has expressed, let it be recorded that the adjudications and observations made either by the Minister or by the learned single Judge in the writ application especially in relation to the order dated 07.04.2017 will not create any kind of prejudice. His case will be decided on the materials and arguments which may be made before the forum concerned.

18. Appeal is dismissed.