(2009) 07 PAT CK 0004

In the Patna High Court

Case No : CWJC No. 16149 of 2008

Nitya Nand Tiwary APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:
Bihar Co-operative Societies Act, 1935 — Section 14, 14(A), 2(1), 44AB, 44AD

Citation : (2009) 4 PLJR 446

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Aditya Narain Singh and Kundan Kumar Sinha, Sanjay Kumar and Ambernath Banerjee, for the Appellant; Pramod Kumar and Vijay Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The first writ petition being C.W.J.C. No. 16149 of 2008 is in relation to Begusarai District Central Co-operative Bank Limited and the sole petitioner therein has been made to superannuate on 30.9.2008 on completion of age of 58 years. C.W.J.C. No. 16239 of 2008 is in relation to Khagaria District Central Cooperative Bank Limited and the sole petitioner therein has been made to superannuate on 31.10.2008 on completion of age of 58 years. The grievance of both the writ petitioners are that in view of the decision of the Board of Directors of their respective Central Co-operative Banks dated 9.9.2008 the age of superannuation of employees of the Bank having been ex tended to 60 years, they have been wrongly made to superannuate on completion of 58 years. Accordingly they pray that their superannuation on completion of age of 58 years be declared invalid and it may further be declared that they are continuing in service and would superannuate on completion of the age of 60 years only and not before.

2. The facts in issue are similar and the issue of law being similar, the two writ petitions with consent of parties have been taken up for hearing for disposal at

this stage itself.

3. The short contention on behalf of the petitioners is that whatever may have been the situation prior to 30.4.2008, on the Bihar Co-operative Societies Act, 1935 having been exhaustively amended with effect from 30.4.2008 by the State Legislature in view of the new provisions which are directed to grant complete autonomy to the Co-operatives including the Central Co-operative Banks, it is now competent for the said Co-operatives to independently take decisions in matters of service conditions of its employees etc. as now provided in Section 44AV of the Act which is contained in Chapter-VID and has an overriding effect on all other provisions of the Act. The amendment gives powers to the Co-operatives themselves, the Cooperative then considering the said power having taken a decision in the matter in its Board of Directors meeting dated 9.9.2008 to extend the age of superannuation of its employees from 58 to 60 years, the said decision cannot be faulted and must be implemented by the Co-operatives. The superannuation of the petitioners as such was not in accordance with law.

4. On the other hand, the Co-operative through respective Managing Directors have filed counter affidavits in both the cases. In both the two counter affidavits it is accepted that pursuant to policy directive issued by the State Government in purported exercise of power conferred on the State Government in terms of Section 66B of the Act, the State Government had permitted the extension of age of superannuation to 60 years upon decision to be taken by Board of each Cooperative individually by Government resolution dated 26.12.2008 and pursuant to that resolution both Co-operative Banks passed their own resolutions and notwithstanding the resolution earlier passed dated 9.9.2008, the age of superannuation were extended only pursuant to governmental resolution dated 26.12.2008 and not before that. The petitioners having superannuated before the said date of govern mental resolution itself no relief can be granted.

5. In the case of Khagaria District Central Co-operative Bank, an additional issue was raised. It was submitted by Mr. Ambernath Banarjee. learned counsel appearing on behalf of the Managing Director of the said Bank that by virtue of Section 14 of the Act as brought about by the amendment on 30.4.2008. the existing Co-operative stood dissolved. Till further election, reorganization and appointment of new Board of Directors, the old Board of Directors were incompetent to take any such decision as taken on 9.9.2008.

6. In fairness to the learned counsel. I may note that the situation as on 26.12.2008 was no different but the Man aging Director accepts the decision of the Board of Directors of the same very Co operative while assailing their decision earlier taken. This, in my view is a paradox and contradiction in itself because if the decision taken on 9.9.2008 was invalid then for the same reason the decision taken by the Co-operative pursuant to the policy decision of the State Government dated 26.12.2008 was equally bad because by then the new Board had not been re constituted and the same Board continued. The relevant facts may be noted briefly hereunder.

7. So far as the Begusarai District Central Co-operative Banks are concerned. its Board of Directors were constituted by notification dated 7.9.2005. That being so. the five years term would normally end on 6.9.2010. They were accordingly functioning and at the relevant time were no under supersession. So far as Khagan(sic) District Central Co-operative Bank is con corned, it was formed by notification dated about 26th of Juno. 2003. Their term would accordingly have ended on 25.6.2008. I may note that before their term ended, on 30.4.2008 amendment to the Bihar Cooperative Societies Act, 1935 was made and Section 14(A) thereof provided that a life span of the Board of Director of the Co-operative would be five years which would be extended by six months to enable the new Managing Committee to be elected and to be in office and in extraordinary situation with a further extension of six months. Thus in no case the life span of the Managing Committee could exceed six years. In case of Khagaria District Central Co-operative Bank, the term was ordinarily to end on 25.6.2008 and with a further grace period of six months, it would end on 25.12.2008. This position is admitted by the respondents in their counter affidavits in which as Annexure-C. they have annexed a circular of the Registrar. Co-operative dated 30.10.2008 explaining the said position and accepting it.

8. Thus on the relevant date under consideration dated 9.9.2008, for both Cooperative Banks, the Board of Directors wore duly functioning. This is of course subject to the argument made in the case of Khagaria District Central Co-operative Bank that by virtue of provision of Section 14 as amended the Co-operative stood superceded,

9. State has also filed counter affidavit. It is the categorical stand of the State in their counter affidavit that the amendment brought to the Act with effect from 30 4.2008 was for the purposes of conferring autonomy on the Co-operatives to deal with their affairs including service matters of its employees. Their stand is that on coming into force of the said amended act. the Managing Committee of the Cooperatives which were functioning would not automatically get dissolved but would continue for the full term with two grace period as noted above within which time they had to realign themselves with short term Co-operative credit structure and get the new Managing Committee elected thereafter. It may be noted that this stand of the State supports petitioners'' contentions.

10. Now to the real controversy. It appears that the State Government in the Department of Co-operative took a decision on 15.5.2006 to permit Central Cooperative Banks to extend the age of superannuation of its employees from 58 years to 60 years subject to the Co-operatives taking such a decision and subject to certain conditions being fulfilled as mentioned therein. This decision was taken pursuant to the decision of the State Government dated 24.3.2005 therein the State Government had amended the Bihar Service Code and in particular Rule 73 thereof in respect of State Government employees, as a consequence whereof the age of superannuation of State Government employees stood enhanced from 58 years to 60 years. I may note that some Cooperatives pursuant to the

aforesaid decision of the State Government in the Department of Co-operative dated 15.5.2006, took a decision to enhance the age of superannuation of its employees to 60 years. This became a subject matter of dispute before this Court which ultimately culminated in the decision of the Division Bench of this Court in LPA No. 752 of 2007 and analogous cases which was disposed of on 27.11.2007. This Court in the UPA held that the decision of the State Government in the Department of Co-operative dated 15.5.2006 was not a decision of the State Government as it was not placed before the State Cabinet and had not been sanctioned by the State Cabinet though it was issued by the Secretary of the Department and with the consent and approval of the State Minister. As it was held that it was not the decision of the Government, it had no effect on the service rules of the employees of the Central Co-operative Banks which had boon framed, issued and enforced by the Government in terms of Section 66B of the said Act. It may be noted here that these service rules have also been issued by the State Government in the Department of Co-operative. Be that as it may, the effect of the decision of the Division Bench, with which I am bound, is that the decision of the State Government dated 15.5.2006 is not legally binding and could not be acted upon.

11. Now we come to the Bihar Cooperative Societies (Amendment) Act, 2008 being Bihar Act 18 of 2008 which came into force with effect from 30.4.2008. It is necessary first to refer to the preamble of the Act in order to appreciate the intention behind the legislative amendments as sought to be made. The preamble inter alia states that it is imperative to improve financial services rendered by the Credit Co-operative Societies and such other societies at all levels and to carry out reforms to make them more democratic. well governed and professionally managed in terms of recommendation of the Baidhnathan Committee constituted by Government of India for revival of short term Co-operative credit structure. It may not be out of place to state here that apparently one of the recommendations of the Baidhnathan Committee was giving functional autonomy to the Co-operatives with least interference by the State which is very object of the Co-operative movement wherein a Co-operative is an organisation for the benefit of its members, managed by its members and for its members. Now the amendments. A new definition has been provided in relation to short term Co-operative credit structure in Section 2(1) meaning State Co-operative Bank, Central Co operative Bank can not (sic-and the?) primary agriculture credit Societies. Then after Section 14 of the existing Act, Section 14(A) has been inserted. Suffice to say that this Section 14(A) provides and recognizes the life span of the Managing Committee of a Co-operative. It inter alia provides that the life span as provided u/s 14 shall be extended by six months of its expiry for enabling the now Managing Committee to be elected. It pro vides for realignment in terms of the now concept of short term Cooperative Credit Scheme. It does not provide that on coming into force of Section 14(A) or from the said Amendment Act the existing Managing Committees of the Co-operatives would stand superceded in any manner In fact the stand of the State

is also that the existing Managing Committees would continue their full term and the changes for re-alignment would take place thereafter It is on strength of this amendment and the stand of the State as noticed earlier that the two Management Committees were validly functioned on 9.9.2008. Now by virtue of the said Amendment Act. Chapter-VID was introduced introducing inter alia Sections 44AI and 44AV. Section 44AI is quoted hereunder:

"44AT. Overriding effect of Chapter VI-D.--Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or the Bihar Self-Supporting Co-operative Societies Act, 1996 or rules framed thereunder or bye-laws of any registered society CM orders issued thereunder, the provisions of this chapter shall have overriding effect."

12. A reference to the aforesaid pro vision as noticed with effect from 30.4.2008 would show that the provisions contained in this Chapter-VID would have an overriding to any other provision of the Act. Rules or bye-laws or orders issued thereunder. In my view, orders issued thereunder would include orders issued under the Act, Rules or bye-laws. Now i must refer to Section 44AV which is quoted hereunder:

"44AV. Autonomy in all financial and internal administrative matters.-A co-operative society under Short Term Co-operative Credit Structure shall, have autonomy in all financial and internal administrative matters including the following areas:-

(a) Interest rates on deposits and loans in conformity with Reserve Bank guidelines,

(b) Borrowing and investments.

(c) Loan policies and individual loan decisions,

(d) Personnel policy, staffing, recruitment, posting and compensation to staff, and

(e) Appointment of auditors and compensation for the audit and internal control system."

13. A reference to this clearly shows that the Co-operative Societies now would have autonomy in all financial and internal administrative matters including personal policy, staffing, recruitment etc. Section 44AT" read with Section 44AD gives this provision an overriding effects and takes away all powers which are found otherwise in the statute or referable to the statutes which are inconsistent with the concept of autonomy of the Co-operatives.

14. In my view, on behalf of the petitioners, it is rightly submitted that the service rules as framed, issued and enforced by the State of Bihar since 1994 in purported exercise of powers u/s 66H are now subordinate to the Cooperatives themselves. The effect is that earlier it was a rule framed by the State Government which only State Government could alter or amend which effectively took out the autonomy of the Co-operatives themselves to deal with in these

matters. but by virtue of Section 44AT read with Section 44AB this primacy has been removed and in view of the autonomy given to the Co-operatives in such matters, now they are competent to and have the jurisdiction to take decision in this matter and accordingly amend those rules on their own without reference to the State Government. This is the true spirit and scope of the amendment.

15. Now we come to the resolution of the Begusarai District Central Co-operative Bank Limited dated 9.9.2008 which is contained in Annexure-4 at page 21 of the first writ petition. A reference to the said resolution would show that the Board of Directors of the said Co-operative noticed the position of the governmental decision dated 15.5.2006, the order of this Court in the Letters Patent Appeal as noticed above but they did not choose to take a decision for enhancement of age of superannuation of its employees based on that resolution of the State Government be cause in the very next paragraph they noted that the Act has been variously amended with effect from 30.4.2008 and in view of the amendment Act they had the authority to lay down policies for service rules of their employees and accordingly it was decided to increase the age of superannuation from 58 to 60 in spite of objection by the Managing Director who wanted the Management Committed to wait tin a decision is taken by the Apex Court in an appeal contemplated to be filed by the State against the judgment given in the LPA as discussed above. It may be noted that the State has not preferred and apparently decided not to prefer any appeal in the matter. It is the validity of this decision which is primarily in question.

16. In my view, the submission of the respondents cannot be accepted. It was now competent for the Management Committee i.e. the Board of Directors to take a decision on their own to extend the age of superannuation that would amount to amending the service rules as framed by Government in terms of Section 66B of the Act in the year 1994. The reason as I have already indicated is that with effect from 30.4.2008 the autonomy having been conferred on the Co-operatives in matters of service conditions of their employees and the overriding effect of this provision being given in Section 44AT. the rules now could be altered or amended by the Co-operatives themselves. If that is not the correct view then it would again be reverting to Government control of the Co-operatives which is antithesis of the very amendment. Thus the Co-operatives now were competent to take such a decision and the decision having been taken would be effective from 9.9.2008 itself. It may also be noted that none of the parties dispute that even otherwise each of the Co-operative in question have already taken a decision to enhance the ago of superannuation of their employees pursuant to Government decision dated 26.12.2008.

17. As indicted above, the contention of Mr. Banarjee, learned counsel appearing for the Managing Director of the Khagaria District Central Co-operative Bank is that the Board of its Co-operative would supercede and could not have taken valid decision on 9.9.2008 has no substance. His submissions are contradiction in terms in which he submits that the enhancement of age of superannuation would

be available only after 26.12.2008 and not prior to that. If the Board of Khagaria Cooperative Bank was incompetent to take any such decision on 9.9.2008. their could be no such decision even thereafter even though the said policy dated 26.12.2008 is accepted.

18. I may also note the contents of the decision of the State taken on 26.12.2008 that is on record. In terms that resolution itself notes the object with which the amendment was brought about. it notes the report of Baidnathan Committee, it notes the State has entered into agreement with the Central Government and NABARD pursuant to which functional autonomy had to be conferred on the Co operatives. It, therefore removes all restrictions which were earlier put on ox tending the age of superannuation by governmental decision dated l5.5.2006 and leaves it to the discretion of the Board of Directors to take a decision in this matter on their own. This shows the position actually changed because of statutory amendment as aforesaid. State was merely clarifying the position and does not confer any jurisdiction because the jurisdiction to do so was conferred by Section 44AI

19. Thus in my view, both the writ petitions must succeed. The superannuation of the petitioners cannot be held to be valid. They would be deem to be continuing in service and would superannuate only on completion of age of 60 years in accordance with law. The writ applications are allowed.