
(1989) 03 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5016 of 1987

Panchanan Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Bihar State Land Development Bank, Bye Laws Rules — Rule 21, 29

Citation : AIR 1989 Patna 313 : (1989) 37 BLJR 462 : (1989) PLJR 437

Hon'ble Judges : Udaysinha, J;B.P. Singh, J

Bench : Division Bench

Advocate : A. Bose, S.P. Gupta and Kaushal Kishore, for the Appellant; Ram Balak Mahto, General, K.P. Singh, Govt. Pleader and Sangita Das Gupta, Jr. Counsel to Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Udaysinha, J.—The petitioner is an "A" Class member of Bihar State Land Development Bank Limited, hereinafter called the Bank and is an aspirant to be elected as one of the Directors of the Bank. The bye-laws of the Bank appeared to be stumbling blocks in the fulfilment of his aspirations. The present application has therefore, been filed for striking down bye-law No. 29(vi) as ultra vires the Bihar and Orissa Co-operative, Societies Act.

2. The Land Development Bank in this State had its origin as a wing of the Cooperative department of the State Government. It was then functioning as Land Mortgage Bank. Subsequently a Co-operative Society was formed with the blessings of the State Government with the name Bihar State Land Mortgage Bank. The Land Mortgage Bank got converted itself into Land Development Bank. In 1982 Chapter 6(a) was added to the Bihar and Orissa Co-operative Societies Act. The whole Chapter is in relation to Land Development Bank. The expression "Land Development Bank" in terms of Section 44(a)(b) includes State Co-operative Land Development Bank and primary Co-operative Land Development Bank. A primary Cooperative Land Development Bank means a registered society

of that name and State Cooperative Land Development Bank means a registered Society of that name and State Co-operative Land Development Bank means a Registered Society of that name registered u/s 11 of the Act and includes Bihar State Co-operative Land Mortgage Bank, registered as such u/s 11. For this, provisions have been made in Chapter VI-A in the Bihar and Orissa Co-operative Societies Act in regard to functions of the land development banks.

3. The purposes of the banks are varied and are set out in Section 44(b) of the Act. The Bank provides long term loans for owning and promoting agricultural activities. Section 44(a)(1) clothes the State Government with power to frame rules for carrying into effect the purposes of Chapter VI(A) i.e. in relation to functioning of Land Development Bank. Section 66 of the Act empowers the State Government to frame rules to carry out all or any of the purposes of the Act. In exercise of that power Bihar Co-operative Societies Rules 1959 have been framed. Rule 15 lays down that a registered Society shall, subject to the provisions of the Act and the rules, make bye-laws in respect of matters enumerated therein. Rule 15(1) relates to qualifications for admission to membership, the continuance thereof and the conditions of cessations or expulsion from membership. Rule 1(f) relates to the mode of holding general meeting of Managing Committee or any other committee of the Society and the powers and conditions which may be exercised and performed by such committee. In terms of R 15 the Bihar Co-operative Land Development Bank has framed bye-laws. The frame of the bank is of a two tier system. At the base is the primary Co-operative Land Development Bank. At the apex is the Bihar State Co-operative Land Development Bank. The authorised capital of the bank is rupees 20,00,00,000 (twenty crore) split up as follows : -

(i) 48,0000/- A Class shares of rupees 25/- each.

(ii) 50,000/- B Class shares of rupees 1,000/- each.

(iii) 25,000/- C Class shares of rupees 1,000/- each.

Bye-law 4 also lays down that apart from the existing C Class shareholders no new shareholder would be admitted. In fact at the time the bank came into being there was only one C Class shareholder, who also has never attended any meeting of the bank nor has taken any interest in the functioning of the bank and even now there is only one "C" Class shareholder.

(iv) 2,99,97,500 E Class shares of rupee 1 each.

4. Bye-laws 11 to 13 deal with admission of members to shares and the formalities therefor. Any agriculturist over 19 years of age, competent to contract and residing in the area of operation of the bank and Cooperative Society shall be eligible for admission as member and shall be allotted A Class shares. The State Government is also eligible for admission as member. It shall be allotted B Class shares. In terms of bye-law 11(4) all persons who have interest in the property to a mortgage by a borrower shall be admitted as nominal members

who are allotted E class shares. They, however, will not be entitled to any share in the asset or property of the bank nor will they have any right to vote. Any person desirous of obtaining loan from the bank is required to become a shareholder by paying rupee one. Bye-law 21 deals with the general body of the bank which is constituted as follows : --

"The general body of the bank shall consist of the following members : --

- (i) Ex Officio and nominated members of the Board.
- (ii) One delegate to be elected from amongst individual members holding "C" Class shares in accordance with Election Rules framed under these bye-laws with the approval of the Registrar Co-operative Societies.
- (iii) One delegate representing "A" class share holders for every 2500 members or part thereof subject to maximum of two from each branch to be elected in accordance with election Rules framed under these bye-laws with the approval of the Registrar Cooperative Societies.
- (iv) State Govt. holding "B" Class shares shall be represented by Officer authorised by Government in this behalf.

5. The Bank has a Board of Directors. The constitution-thereof is provided for in Rule 29 of the bye-laws. Since the challenge is to bye-laws VI to 29 the whole bye-laws must be quoted in extenso which reads as follows: --

"The Management of the Bank shall vest in a Board consisting of twenty one persons of whom :

- (i) one shall be Managing Director
- (ii) One shall be Registrar, Co-operative Societies or in his absence his nominee who shall not be below the rank of Additional/Joint Registrar, Co-operative Societies.
- (iii) One shall be Commissioner and Secretary to Govt. of Bihar in Co-operative Department or his nominee who shall not be below the rank of Joint Secretary to the Government.
- (iv) One shall be financial Commissioner of Bihar or his nominee who shall not be below the rank of Secretary/Spl. Secretary/Additional Secretary to the Govt.
- (v) One shall be Chairman elected in accordance with these bye-laws.
- (vi) Sixteen shall be elected from amongst the delegates, representing "A" Class members as elected in accordance with rules framed and bye-law 21(iii) provided that at least one director and not more than two shall be elected from each division.

Nothing contained in these bye-laws shall invalidate the composition of General Body and the election of the Chairman and members of Board of Directors if

delegates from at least two thirds of total branches are elected even though the elections of delegates of the remaining branches are not held due to some reason.

Sub-rule (vi) quoted above lays down that sixteen members of the Board shall be elected members. Those sixteen shall be elected by a college of delegates representing "A" Class members elected in accordance with rules framed and bye-law 21(iii). The other part of the said bye-law is that the composition of the general body and the election of the Chairman and members of the Board of Directors will not be invalidated even if elections of delegates from two thirds of the Branches are not held. Thus every member of the Bank is not entitled to vote in the election of Directors of the Board. It is only delegates who can vote. The petitioner being "A" Class member he can only be elected a delegate. If he is elected delegate he may participate in the election of Directors. But if he is not elected a delegate he cannot vote in the election of Directors. Bye-law 29(vi) read with bye-law 21(iii) introduces a pattern of indirect election for membership of the Board of Directors. The petitioner is aggrieved by the bye-law providing for election of delegates and the election by the delegates of members of the Board of Directors.

6. The stand of the petitioner is that the concept of indirect election for electing the Directors of the Bank is ultra vires the Cooperative Societies Act and the Rules. The Act does not postulate indirect election. Reliance has been placed upon the provisions of Section 28 of the Act to sustain this submission. That section reads as under : --

"Votes of members-- (1) Subject to the provisions of Sub-section (2), each member of a registered Society shall have one vote only as a member in the affairs of the Society, provided that in the case of an equality of votes the Chairman shall have a casting vote.

(2) A registered Society which is a member of any other registered Society shall have as many voters as may be prescribed by the bye-laws of such other Society, and may, subject to such bye-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power, provided that no member who is disqualified for such appointment under any rule shall be so appointed.

(3) Save as provided in Sub-section (2), voting by proxy shall not be allowed except with the general or special sanction of the Registrar for any Society or Class of Societies."

Thus Sub-section (1) provides that every member of a registered Society shall have one vote in the affairs of the Society. Sub-section (3) provides for a situation where a registered Society is a member of any other registered Society. The present case covers the situation contemplated by Sub-section (2) of Section 26 is a departure from the provisions of the Companies Act which provides for voting right in proportion to the financial shareholding. The submission is that

election of Directors of the Bank is an "affair of the Society" and, therefore, the petitioner is entitled to vote in the election of Directors even if he is not a delegate elected in terms of Bye-law 21(iii).

7. Rule 7 of the Bihar Co-operative Societies Rules, 1959 relates to admission to membership of a registered Society. Since it is not in controversy that the petitioner was a member of the Society, it is not necessary to mention in detail the process of admission to membership. The question, therefore, is whether indirect election and direct election are permissible for constituting the Board of Directors. It is obvious that Rule 21(iii) and the other Rule 29 lay down a process of indirect election. The provision of Section 28(1) does not militate, in my view, against the concept of indirect election. The concept of the Land Development Bank is that at the base there are primary Co-operative Societies members. They are semi autonomous in their function. They are spread all over the State. At the apex is the Bihar State Land Development Bank. The function of advancing loans or aid to farmers/agriculturists is performed by the Bank through the primary Co-operative Land Development Bank. The structure is pyramidal. Whole structure being so, it is difficult to appreciate why elections cannot be permitted. Indirect elections are well known concepts. The President of India and similarly the President of United States of America are also elected indirectly by college of electors. Indirect elections are thus not inherently illegal or unconstitutional on the face of it, therefore, indirect elections seem to be the natural corollary. The question is whether the structure and the pattern of election is contrary to the Co-operative Society concept or to the provisions of Bihar and Orissa Co-operative Societies Act.

8. The provisions of Section 28 do not negative the system of indirect election. Since the number of "B" Class shareholders is 2,99,97,500 to permit every member to take part in the election of Directors may be a colossal task. Provision can, therefore, certainly be made for indirect election. The concept of one member one vote does not rule out indirect election. When a member participates in electing delegates as laid down in bye-law 21(iii), he has exercised his right to vote. It is difficult to hold that the right to vote has been denied to him if he has only participated in electing a delegate and has not participated in the election of Directors. Rule 21(iii) provides that every 2,500 "A" Class shareholders shall elect one delegate subject to a maximum of two delegates from each Branch. The delegates constitute an electoral college for election of Director.

9. It is true that the Act and the Rules are silent about indirect election and about election to constitute electoral college but we have got to consider whether that concept has been prohibited. As stated earlier every Society must have its bye-laws. The bye-laws must have sanction of the Bihar Co-operative Societies Rules and the Rules in turn must have sanction of the Act. The words indirect elections or indirectly elected have not been used either in the bye-laws but they unmistakably point to the conclusion that what is postulated is indirect

election of the Board of Directors. There is no prohibition against, indirect election. The right to a member to exercise one vote does not imply that he must have right to vote at every stage, I am unable to find any inherent infirmity in pattern of indirect election. In fact where the electorate is too large indirect elections may well be resorted to. In the instant case as well, the electorate runs into several lacs. In the absence of any prohibition in the Act or the Rules against indirect election, I am unable to hold that the Co-operative Societies Act and the Rules militate against indirect election. To that extent Rule 29(vi) and Rule 21(iii) cannot be held to be ultra vires the Act and the Rules. The submission, therefore, urged on behalf of the petitioner must squarely be rejected.

10. There is yet another aspect of the matter. The bye-laws which the petitioner is challenging are the very bye-laws on the basis of which the petitioner was admitted to the membership of the Land Development Bank. The impugned bye-laws have not been introduced after the petitioner became member of the Land Development Bank. He, therefore, joined it with eyes open knowing full well the structure of the Bank and that the Board of Directors shall be an indirectly elected body. The petitioner, therefore, cannot make a grievance about the process of indirect election of Directors of the Board. It is true that bye-laws are not statutory laws but there can be no doubt that they bind the members. That is what was held in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, . At para. 10, the Supreme Court observed "The bye-laws that are contemplated by the Act can be merely those which govern the industrial management, business or administration of a Society. They may be binding between the persons affected by them but they do not have force of the statute." The bye-laws thus bind the petitioner as any other member.

11. The contention of the petitioner cannot be entertained for yet another reason. The pattern of indirect election has been accepted since 1956 when the bye-laws were framed That is how the rules have been interpreted. That is how "one vote in the affairs of the Society" has been interpreted by the Society, the Registrar and all co-operative authorities. There is no reason why that interpretation of the rules be not accepted as valid. The principle of *Contemporanea Expositio* applies to the present case. That is what was laid down by the Supreme Court in *National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay*, where Ramaswami J. observed as follows:- (at pp. 1052-53)

" In our opinion, the principle of *contemporanea expositio* applies to the present case. The Act was passed in the year 1888 and there appears to be a practice followed by the Bombay Municipal Corporation for a very long time of treating the land and the building constructed upon it as single unit and charging the property tax upon the owner of the land in a case where the land is let out for a period of less than one year to a tenant who has constructed a building thereon (see *Ramji Keshavji's case* LR (1954) 56 Bom 1132) (supra)."

12. The petitioner has been associated with the Co-operative Society since long., may be over thirty years as stated by Mr. Kamalapati Singh, learned G.P 5 at the Bar. He has accepted and worked on the principle of indirect election. That is how he joined the Land Development Bank. It is not open to him now to challenge the pattern of indirect election. If it does not suit the petitioner it will be open to him to walk on to of the Bank.

13. Learned counsel for the petitioner relied heavily on the expression "one vote in the affairs of the Society" to contend that every member of the Bank was entitled to take part in every deliberation of the Bank. I regret I am unable to subscribe to that meaning of the expression "in the affairs of the Society". Obviously, the Bank must work through an executing agency the Board of Directors. The entire body of lacs of members cannot participate directly in every function of the Bank. That would be chaotic. The fact that every person is entitled to vote sufficiently indicates his participation in the affairs of the Society. Every expression must be interpreted in the context in which it has been used. That is what was laid down as rule for construction in *The Tata Engineering and Locomotive Company Ltd. Vs. Gram Panchayat, Pimpri Waghere*, . An interpretation must be given in order to fulfil the object of the proviso. For all the reasons indicated above I am unable to strike down the system of indirect election postulated by bye-law 21(iii) and bye-law 29(vi) of the Bihar State Land Development Bank.

14. Learned counsel for the petitioner also assailed the validity of the proviso to Rule 29(vi) which lays down that election of the composition of the general body and the election of the Chairman and members of the Board of Directors would not be invalidated if delegates from at least two thirds of the total branches are elected even though the election of delegates of the remaining branches are not held due to some reason. Learned counsel for the petitioner contended that the expression "due to some reason" was vague and unbridled and had the propensity of shutting out persons opposed to a coterie which may be controlling the Bank at any point of time. In my view, the fact that a bye-law is liable to be abused by unscrupulous persons cannot be the test for testing its validity. The expression "due to some reason" must be given a reasonable rational meaning. If the reason is unrelated to the object the election of the Board of Directors or the composition of the general body it certainly would be liable to be assailed in an appropriate proceeding but the fact that it is liable to be misused or used mischievously cannot be the test for testing its vires. If such a situation arises where one third branches are shut out from participating in the election, the petitioner may muster strength to get the bye-laws changed.

15. For all the reasons stated above, I find no merit in this application. It is dismissed accordingly.

B.P. Singh, J.

16. I agree.