

(1985) 08 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case no. 671 of 1985

Paras Nath Thakur and others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151
Constitution of India, 1950 — Article 226

Citation : (1985) PLJR 168

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : A. Bose, Kaushal Kumar and S.P. Gupta, for the Appellant;
Shreenath Singh, Benoy Krishna Shukla and Siya Ram Sahi for the respondents
no. 6 to 14 and Mr. Kamlapati Singh (G.P. 5) for the official respondents, for the
Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—This application arises out of an election dispute in a Co-operative Society, and the main question falling for decision of this Court is as to whether the Registrar, Co-operative Societies, committed any error of jurisdiction in setting aside the election of the petitioners on a review application. In Chanpatia (West Champaran) there is a co-operative society named as Chanpatia Co-operative Development and Cane Marketing Union Ltd. (Petitioner no. 8). The Managing Committee of this Society was dissolved by the Government in the year 1980 under the provisions of section 41(6) of the Bihar and Orissa Co-operative Societies Act (for short "the Act"). And the District Magistrate, West Champaran was appointed as its Administrator. The Administrator, being himself otherwise busy, had deputed the Assistant Registrar, Co-operative Societies, Bettiah as his nominee for conducting the Annual General Meeting of the Society convened on 16.2.1984 for electing the office bearers. 105 delegates out of the total of 108 (sic) in the meeting under the Presidentship of Shri Shiv Chandra Jha, respondent no. 5, as the District Magistrate could not reach. The names of

some office bearers as members of the Managing Committee were proposed and seconded for election in the Union and the matter was put to voting.

According to the petitioner's own case, when the matter was put to voting whereas 41 delegates voted in support of the proposal, 52 voted against it and, therefore, the first proposal had to be dropped by the President. According to the further case of the petitioners, then another proposal was made by another delegate giving another list of office bearers and the members of the Managing Committee, which is said to have been unanimously approved by the delegates attending the meeting.

2. After the election two sets of persons, one on behalf of Birendra Kumar Sharma, respondent no. 6, and the other on behalf of Shiv Chandra Jha, respondent no. 5, and others, started claiming that they had been elected in the said meeting. This led to some controversy and it is said that respondent no. 5 took away the proceeding Book.

It appears that another meeting was held on that very day under the Presidentship of one Alakh Kumar Mishra in which 59 delegates had participated for election of the Office bearers of this Society, and the proceedings were recorded in another register. According to the unanimous resolution, another set of persons were elected as Office bearers of the Managing Committee and members of the Union. This proceeding book was thereafter returned to the Assistant Registrar. Both the proceeding books were banded over to the District Magistrate, Bettiah, who after obtaining the opinion of the Government Pleader, declared the election of the Second proceeding as valid.

3. Thereafter respondent no. 5 filed a case on 25.2.1984 before the District Co-operative Officer, Bettiah, to restrain respondent nos. 6 to 14, on the basis of the second meeting, from interfering with the functioning of the petitioners and respondents 15 to 18 claiming themselves to be elected in the first meeting. Two days thereafter, i.e. on 27.2.1984 Birendra Kumar Sharma, respondent no. 6, also filed a case before the Registrar, Co-operative Societies, for declaring the validity of the second election.

4. In view of this situation, on 5.3.1984 the District Co-operative Officer passed orders restraining both the parties from functioning as office bearers of the society. In view of two cases filed before the two authorities as mentioned above, respondent no. 5 filed a petition before the Registrar to call for the records of the case from District Co-operative Officer.

At this stage petitioner no. 3 Kameshwar Nath Tewari filed a case u/s 65A of the Act before the Co-operative Minister against the order of restraint dated 5.3.1984. The Minister held in favour of respondents 6 to 14 allowing them to function as office bearers and sent back the case to the Registrar for deciding the dispute on merits u/s 48 of the Act (Vide Annexure-3). The Registrar by his order dated 29.5.1984 (Annexure-2) held the election of petitioners and respondents 15 to 18 as legal and valid.

5. Respondents 6 to 14 then filed a review petition on 11.6.1984 (Annexure-5) u/s 48(g) of the Act before the Registrar. Thereafter on 28.6.1984 they also filed a writ petition bearing C.W.J.C. No. 3077 of 1984 in this court against the order of the Registrar (Annexure-2). That writ application, however, was dismissed in limine by a learned single Judge of this court. The Registrar by the impugned order dated 6.2.1985 (Annexure-1) has reviewed his original order dated 29.5.1984 (Annexure-2) and taking a contrary view has held the election of respondents 6 to 14 as valid) which is under challenge.

6. The order has been challenged by the learned Advocate appearing for the petitioners, mainly on three grounds, namely (1) the petitioners having not been impleaded as parties to the review application, the impugned order which was to their prejudice, could not have been passed by the Registrar, (ii) the Registrar has transgressed the limitation on review power and has acted as a court of appeal, and (iii) the earlier order having been affirmed by this Court in the writ application, the Registrar could not have proceeded with the review matter.

7. Respondent no. 10 had entered caveat at the time of admission of the writ application itself and Mr. Shreenath Singh appearing for the contesting respondents has referred to some of the statements made in the said petition. With reference to the date of the meeting it has been said by this respondent that respondent no. 5 had taken away the original proceeding book even before the election had been held and that majority of the delegates were against the proceeding of the first meeting. With reference to the original order of the Registrar contained in Annexure-2, the case of this respondent is, as highlighted in course of the argument also, that the Registrar (predecessor-in-office of the present Registrar who passed the impugned order) was already under order of transfer and he had decided the matter without considering the relevant and material evidence available on the record and thus committed serious illegality in deciding the matter in favour of the petitioners. Certain other mistakes committed in the order (Annexure-2) have also been highlighted in the counter-affidavit, to which a reply was also filed by the petitioners reiterating their earlier stand.

8. With respect to the first point urged on behalf of the petitioners regarding non-joinder of the necessary parties the argument on behalf of the respondents is that in the review application all the persons who were parties in the original proceeding of the election dispute were impleaded as parties i.e. all the parties who were brought on the record in the two cases filed before the District Co-operative Officer and the Registrar; and inasmuch as no new party could be made in the review application, the respondents 6 to 14 committed no default in this regard.

In this connection Mr. Shreenath Singh also submitted that in any view of the matter, no prejudice can be said to have been caused on account of non-joinder of any of the office bearers claiming to be elected in the first meeting inasmuch as the bill (Annexure-3) of the lawyers appearing for the opposite party in the

review application was paid by the Secretary under the signature of petitioners 3 to 5 claiming to be two of the office bearers elected and, therefore, they had full knowledge of the case.

For the aforesaid reasons I do not find any substance in the first ground.

9. Now I take up the second point as to whether the Registrar has committed any error of jurisdiction in exceeding the power of review.

Sub-section (7) of section 48 confer upon the Registrar the same power of review as vested in the Civil Court u/s 114 and Order 47 Rule 1 of the CPC together with the inherent jurisdiction specified in section 151 of the said Code, in most general terms to deal effectively with all matters validly referred to and pending before him. [See Pt. Raghav Jha v. Registrar, Cooperative Societies : 1962 B.R.L.J. (Rev.) 62: ILR 41 Pat 25].

It is not disputed that the predecessor-in-office of the present Registrar who passed the impugned order, was under orders of transfer, and it was submitted that he did not consider some of the relevant facts and thus committed error apparent on the record. I find that the impugned order has taken note of this fact in great detail where it has been said that several important factors having a bearing on the result of the proceeding were not considered on the earlier occasion so much so that even the report of the District Magistrate, Bettiah who was the Administrator and under whose control the election was held, was not considered. The Assistant Registrar who was present in the election meeting and in whose presence the entire election, was conducted, had said in his report that Shri Jha had left the meeting along with some representatives and the proceeding Book of the meeting and that another meeting was held with 59 members proceeding of which was recorded in another register. The opinion of the Government Pleader, already referred to above, was also not considered by his predecessor.

In my considered opinion, the non-consideration of these important documents and materials led to the passing of wrong order on the earlier occasion in favour of the petitioners and others. On this occasion when a review petition was filed, on referring to the relevant materials it was detected that a mistake apparent on the face of the record was committed. I have carefully examined the impugned order and not find any warrant for the argument that the Registrar has transgressed the limitations of the review jurisdiction and has acted as a court of appeal. In that view of the matter, the reliance placed on behalf of the petitioners upon the case of Sri Ram Janam Singh V. Assistant Registrar, Co-operative Societies, Dinara and others (1982 B.B.C.J. 282) will have no application inasmuch as it was clearly found there that the reviewing authority did not find any new or important matter or any mistake apparent on the face of the record.

10. Now remains the last point as to what would be the effect of the dismissal of the writ application by this Court. It has been seen that writ application was filed in this Court after the filing of the review application and the same was dismissed

in limine.

It was submitted by Mr. Shreenath Singh that distinction should be made between a dismissal in limine without any speaking order and a dismissal by a speaking order. Learned counsel made another submission that a further distinction should be made where a petition under Article 226 of the Constitution is filed after preferring the statutory appeal or revision by a party and before the same.

I find that the submission of Mr. Shreenath Singh is unassailable and it must be held that where a petition under Article 226 is dismissed in limine without any speaking order, such a dismissal does not constitute a bar of the principle analogous to *res judicata*, to a subsequent petition. This principle will apply a *fortiori* where the petitioners had already available the alternative remedy in the meantime. The theory of merger does not apply to such a case. If any authority is needed in support of this view, reference may be made to *Hoshnak Singh v. Union of India and others* (A.I.R. 1979 S.C. 1328) where after review of a larger number of cases the above principle has been laid down.

11. Mr. Bose appearing for the petitioners could not cite any authority to wriggle out of this situation. The learned Government pleader no. 5 also fully supported the submissions made on behalf of the contesting respondents and adopted the arguments of Mr. Shreenath Singh. From the above discussions I come to the irresistible conclusion that this application has no merit and must fail. It is accordingly dismissed with costs. Hearing fee is assessed at Rs. 250/- only.