

(1987) 03 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17 of 1987 and 589 of 1987

Prabhu Dayal Singh and another

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Bihar and Orissa Co-operative Societies Act, 1935 — Section 14(3), 41(2), 41(9)

Citation : (1987) PLJR 645

Hon'ble Judges : S.C. Mookherji, J; L.M. Sharma, J

Bench : Division Bench

Advocate : A. Bose, Kaushal Kumar and S.P. Gupta, for the Appellant; R.B. Mahto, Advocate General, M.S. Madhup, S.C.I., Kishore Kumar Mandal . J.C. to S.C.I. and Miss Sangita Das Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma and S.C. Mookherji, JJ.—The petitioners have played for quashing the order of the State Government dated 20.12.1986, as contained in Annexure "1" staying the election of Gopalganj Central Co-operative Bank which had been announced to be held according to the programme. There is a further prayer for a direction to the Registrar, Co-operative Societies, respondent no. 2, to convene the preliminary general meeting and annual general meeting immediately for the purpose of election. The life of the Board of Directors of the Cooperative Bank expired on 30.6.86 and the Board was continuing to function during the grace period as provided by Section 14(3) of the Bihar and Orissa Cooperative Societies Act (hereinafter referred to as the Act). Since this period was limited to six months time, the Board took steps for holding preliminary general and annual general meeting for the purpose of completing the election of the office bearers of the new Committee. However, for the reasons detailed in the counter affidavit filed, on behalf of the respondents, the meeting could not take place on the dates announced and fresh dates were fixed. On the 30th of October, 1986, that is before the next date, the Registrar superseded the Board

by his order as contained in Annexure "B" to the counter affidavit and appointed the District Magistrate as Special Officer. Several persons interested in the Cooperative Bank then moved this Court by a writ petition in C.W.J.C. 5118 of 1986 which was placed for admission on 19.11.1986 when on behalf of the State it was said that a revised programme of the election had already been chalked out. In the circumstances, a prayer was made for permission to withdraw the writ application which was allowed. Subsequently, the State Government issued the impugned order in Annexure 1 staying the process of election again. The petitioners are challenging the order on the ground that the State has no power to do so.

2. The present writ application was filed on 2.1.87 and was admitted on 7.1.87 by a Division Bench which stayed the operation of Annexure 1 with the observation that if the election was held, it will be subject to the final decision in the present case.

3. On 11.2.87, C.W.J.C. 589 of 1987 was filed for a direction to the Registrar to take steps for holding the election expeditiously. The relief was claimed on the basis of the stay order passed in the earlier case. This case, however, was not formally admitted, but we directed it to be placed on the cause list When we started hearing the present case. That case is also being disposed of today by a separate judgment.

4. It has been contended by Mr. A. Bose who appeared in support of the writ petition that the State Government does not have any power to stay the election and the impugned Annexure "1" is without jurisdiction. Mr. Advocate General in his reply relied on the provisions of sub-section (9) read with, sub-section (2) of section 41 of the Act. We are afraid, the argument of the learned Advocate General must be rejected. An examination of the section will show that the power to dissolve the Managing Committee of a registered society was initially vested in the Registrar under sub-section (1). The power for extension of the period of suspension was bestowed on the State Government subsequently by an amendment, as included in the third proviso. At the same time, sub-sections (6) to (10) were added to the section, clothing the State Government to pass an order of supersession. The legislature while dealing with the power of the Registrar provided for appointment of a person for carrying on the business of the Society during the period of supersession and this authority is generally referred to as Special Officer. While amending the section by addition of sub-sections (6) to (10), the legislature included a similar provision, but gave a specific name, to such authority by calling it Administrator. A close examination of the sub-sections (6) to (10) leads to the irresistible conclusion that the power of the State to act under sub-section (9) is confined to a case of supersession by the State itself u/s (6) and is not available where initial order is passed by the Registrar under sub-section (1). We, therefore, hold that the order in in Annexure "1" could not have been validity passed by the State under sub-section (9). The learned Advocate General did not suggest that the order can be saved

by reference to section 65A or any other provision of the Act. Annexure "1", therefore, must be quashed.

5. Mr. Advocate General argued that in view of the circumstances in which the election has to be postponed, this Court should not interfere in the present case. He relied on the statements in the counter affidavit that it was not possible to hold the election. Special reference has been made to the letter as contained in Annexure R (2) dated 21.11.86 which is at page 144 of the records. The District Magistrate had therein detailed the circumstances which, according to him, rendered it impossible to hold a fair election. Mr. Advocate General dilated the point at some length and inter alia, argued that the members of the outgoing Managing Committee were guilty of serious lapses in the management of the Co-operative Bank resulting in loss of large amounts of money. The present writ petition through the petitioners is an attempt on their part through a side door to capture the Co-operative Bank with a view to stifle the enquiry which is going on. If the guilty persons are not allowed to be brought to book the Co-operative Society will completely collapse. This Court in its writ jurisdiction therefore should not interfere in the present case. Mr. Bose, the Learned Counsel for the petitioners, has attempted to refute the allegations and argued that since there is a provision to debar unscrupulous members of the Cooperative Society from taking a part in the election, appropriate orders may be passed against guilty persons. But so far as the petitioners are concerned, they are entitled to press their democratic right for getting the election held without delay. We do not find ourselves in a position to go into the merits of the allegations and counter allegations in the present case and we do not think that the writ application should be dismissed as suggested on behalf of the respondents. However, we do appreciate that the allegations which are very serious and, if proved, are likely to jeopardize the existence of the Co-operative Society itself cannot be ignored altogether and it will be appropriate for the Registrar to take into account the situation as reported by the District Magistrate and decide the matter in exercise of his statutory duty. The period fixed for the election is already over and it is not now possible for any body to hold the election in accordance with the programme announced earlier. The Board has fixed a date of the election. The power to prepare programme for the election is undoubtedly with the Registrar. Mr. Bose strongly suggested that this Court should direct him to complete the election within a short period say two months. In view of the allegations and counter allegations and in view of the letter written by the District Magistrate, which was addressed to the Registrar and on which orders have not been passed, we do not consider it a fit case for fixing a time limit for the Registrar to get the election completed. The Registrar will have to consider the matter and exercise his jurisdiction in accordance with the exigency of the situation. The main object of a Cooperative Bank which has been repeatedly emphasised by Mr. Bose was certainly to be kept in mind by the Registrar and he will also take into account the suggestion of the respondents while fixing a date. If the Registrar considers it necessary for holding any enquiry into the allegations after giving an opportunity

to the parties to lead evidence, he can do so but he should take all these steps expeditiously so as to avoid undue delay. We accordingly, quash the order in Annexure 1 and direct the Registrar to take steps as indicated above C.W.J.C. 17 of 1987 is allowed but in the circumstances without cost