

(1981) 05 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2817 of 1980

Radhey Shyam Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1982 Patna 35

Hon'ble Judges : S.K. Choudhuri, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : A. Bose and Shahjahan Ali, for the Appellant; Chuni Lal, Government Pleader No. 5 and S.K.P. Sinha, Jr. Counsel to Government Pleader No. 5, for the Respondent

Judgement

S.K. Choudhuri, J.—In this writ application filed under Articles 226 and 227 of the Constitution of India the petitioners pray for quashing the notification dated 4-11-1980 issued by the State Government by which a new Managing Committee of seven members had been constituted. The grievance of the petitioners is that their names ought to have been found in Annexure 1 and their names should not have been replaced by the names of respondents No. 4 and 5. It may be stated here that by a supplementary affidavit filed in this Court (sic) a subsequent notification dated 26th March, 1981 by which the life of the aforesaid Committee constituted under Annexure 1 has been extended till 15-4-1981. A copy of this notification has been made Annexure 6 to this supplementary affidavit.

2. It appears that Magadh Central Co-operative Bank Ltd., Gaya respondent No. 3, was superseded by the Registrar of Co-operative Societies u/s 41(1) of the Bihar and Orissa Co-operative Societies Act, 1935, on allegation of some charges of misconduct etc. This period of supersession was extended from time to time by the State Government and ultimately a Managing Committee consisting of seven members was constituted by notification dated 16th October, 1980. A copy of this is Annexure 2/1 to this application The names of the two petitioners find

place in the said Annexure against serial Nos. 6 and 4 respectively. This notification mentions that this Committee was constituted for the purpose of better management of the Bank and for calling a general meeting for holding the election. These seven members of the Committee had to continue till 31-3-1981, or until further orders. It appears that shortly thereafter on 4-11-1980, another notification was issued substituting the previous notification Annexure 2/1. This notification is also in the same terms as Annexure 2/1 but here the Managing Committee of seven members was constituted without the petitioners and in place of two petitioners the names of respondents Nos. 4 and 5 have been mentioned.

3. The grievance of the learned counsel appearing for the petitioners is that the Government has no power to issue the notification, Annexure 1, replacing the previous notification, Annexure 2/1, at any time before the expiry of the period of earlier notification, namely, 31-3-1981. G. P. 5, learned counsel appearing for the respondents Nos. 1, 2, & 3 however, contended that the first notification which was issued on 16-10-1980, itself reserves the power to issue any subsequent notification, as the previous notification itself mentions that the Committee was to continue until further orders or till 31-3-1981. According to the learned counsel, therefore, there is no illegality committed by respondent No. 1 in issuing Annexure 1 before the expiry of 31-3-1981. In my view the submission of the learned counsel appearing for respondents 1 to 3 is correct. This notification Annexure 1 does not, in fact, modify the previous notification contained in Annexure 2/1. It appears that it is a fresh notification issued by the State Government, respondent No. 1, the constituting a fresh Committee consisting of seven members, names of which have been mentioned in Annexure 1. As the notification, Annexure 2/1, itself states that the appointment of the Committee was to continue until further orders, the State Government had the power to issue the subsequent notification contained in Annexure 1. Accordingly, the contention of the learned counsel for the petitioners has no substance.

4. It was next contended that no opportunity of hearing was given before the names of the petitioners were removed from Annexure 2/1. I have already indicated above that it is not a case of removal of two members from Annexure 2/1 but, in fact, by issue of Annexure 1 the State Government has constituted a new Managing Committee for the purposes which have been mentioned in that notification. In that view of the matter, in my view, as the petitioners have not acquired any legal right under Annexure 2/1 they cannot challenge the issue of notification, Annexure 1, and, therefore, the decisions, which have been cited by the learned counsel for the petitioners that rule of natural justice has been infringed, have no application.

5. However, learned counsel for the petitioners pointed out that by Annexure 1 the Committee was constituted for the purpose of better management of the Bank and to call a general meeting for holding the election. The main purpose, according to the learned counsel for the petitioners, was to hold the election by

calling a general meeting. The grievance of the petitioners is that though that Committee has been constituted as far back as on 4-11-1980 no meeting has yet been called for holding the election. Learned Government Pleader No. 5, however, could not dispute the fact that the seven-member Committee constituted under Annexure 1 was, in fact, constituted for the purpose of calling a general meeting and holding the election. As there is a specific direction in Annexure 1 itself that the Managing Committee of seven members is being constituted for the purpose of calling a general meeting for holding the election it is just and proper that no further delay should be made in calling the said general meeting for holding the election by the Committee as early as possible. Learned counsel appearing for the petitioners suggested that no further delay should be made in calling the said general meeting and It should be done within two months from the date of the receipt of this order by the authority concerned. In my view the reasonable time within which the meeting should be called and election should be held is three months. In the circumstances. I direct the authority concerned to call the general meeting . and hold the election within three months from the date of the receipt of this order. The Registrar, Co-operative, should see that this direction of the Court is followed. With the aforesaid direction this writ application is disposed of. Let a copy of this order be handed over to learned Government Pleader No. 5 for communication to the authority concerned mentioned in Annexure 1.

Nagendra Prasad Singh, J.

I agree.