

(2005) 02 PAT CK 0128
In the Patna High Court
Case No : CWJC No. 9436 of 2004

Raj Kishore Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 4 PLJR 571

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Bihar State Co-operative Bank, learned counsel for the R.B.I, and learned counsel for the respondent No. 9. On an earlier occasion this Court had issued certain directions in the matter which the State and other authorities, chose to challenge the same in the Letters Patent. The matter ultimately was taken to the Apex Court and the Apex Court directed that the order passed by the High Court being in the interest of all concerned should be observed subject to the modification and the direction given by the Supreme Court in its order dated 25.11.2004. The Apex Court also observed that looking to the exigency, the Judge in the matter can issue interim directions, instead of issuing any direction, the Apex Court remitted the matter to this Court with the observation that this petition may be disposed of within two weeks.

2. Therefore, I have heard the parties.

3. The petitioners are Chairman/Director of Patliputra Central Co-operative Bank Limited, Patna. For the purposes of clearance of the cheques etc. they are affiliated with the respondent No. 4. In the system and as the R.B.I. has explained it that the cheques can be cleared in clearing house if these are presented by its members who in his turn can issue sub-membership. It appears that Managing Director, Bihar State Co-operative Bank Limited (Apex Bank) in his capacity as the Managing Director issued an order on 5.7.2004. It is undisputed before me that the said order was passed by him without affording any

opportunity of hearing to Patliputra Central Co-operative Bank Limited. After recording certain reasons the said Managing Director directed de-affiliation of Patliputra Central Co-operative Bank Limited from the Apex Bank. He also ordered supersession of voting rights with immediate effect as consequence to it Patna Central Co-operative Bank Limited ceased to be a member of the Apex Bank and then stood divested of all voting rights in the affairs relating to the Apex Bank. He also observed that a notice be published in the newspapers regarding deaffiliation for the knowledge of the common masses so that the existing and prospective customers may know that the Apex Bank shall in future have no role to play with regard to the affairs of PCCB Ltd. He also ordered that the matter be recommended to the Registrar Co-operative Society for supersession of the existing board of the PCCB Ltd. and the request be sent to the Registrar to dissolve the board of the PCCB and conduct a fresh election as per provisions of the Co-operative Act. The petitioners and the Bank being aggrieved by order dated 5.7.2004 which has paralysed the absolute working of the bank filed cases before the Registrar Co-operative Society. The said cases were numbered as 105/04 and 106/04. According to petitioners avoiding hearing of the matter and keeping the urgency into shelves the Registrar Co-operative Society in league with the Managing Director of the Apex Bank issued memo No. 4054 dated 23.7.2004 to the petitioners to show cause that why the Board of Directors of PCCB be not suspended. Being aggrieved by the said memo 4059 contained in Annexure-1 the petitioners who happened to be Chairmen and Directors of the PCCB are before this Court.

4. Learned counsel for the petitioner has submitted that the manner in which Annexure-2 was issued would clearly show that the Managing Director was usurping the powers of Board of Directors and General Body of Apex Bank and without giving any opportunity of hearing to the PCC Bank or its Directors stopped the works and working of the Bank and at the same time without any authority of law made the recommendations to the Registrar, Co-operative Society. It is also submitted that connivance and conspiracy of the Registrar, Co-operative Society with the Managing Director, Apex Bank is writ large when it is found that instead of hearing the appeal/ case on the merits the Registrar relying upon very same recommendations, which were under challenge before him, issued the notice to show cause to the bank and its Chairman/Directors. It is submitted that before taking such an action the Registrar so also Apex Bank were required to look into the matter, the Registrar was required to record his personal satisfaction and his opinion that present was a case falling under sub-section (1) of Section 41 of the Act. Learned counsel for Apex Bank and the Managing Director referring to Annexure-2 submitted that the PCC Bank being a member of and associated with the Apex Bank was obliged to observe the orders issued by the Apex Bank and as they were observing the orders in their breach and were violating the same to the hilt the Managing Director was justified in issuing Annexure-2. The Respondents Reserve Bank in its detailed affidavit have submitted that taking undue advantage of the situation the respondent Apex

Bank was blackmailing the petitioners and Patliputra Central Co-operative Bank. They have also submitted that an order as contained in Annexure-2 could not have been passed by the Managing Director in his personal capacity and ought to have been resolved in the General Body and issued by the Board of Directors of the Apex Bank.

5. It has been categorically stated in the counter affidavit of the Reserve Bank that the Patna District Central Co-operative Bank is not a member of Bankers Clearing House and is a sub-member of Bankers Clearing House through respondent No. 4. It is also stated that respondent Nos. 4 and 5 taking advantage of their advantageous position deprived the Patna Central Cooperative Bank of clearing facilities. It is also submitted in the affidavit of RBI that the order dated 5.7.04 issued by the Managing Director of Bihar State Co-operative Bank would only be a recommendation. They have categorically stated that the uniform regulations and rules of Bankers Clearing House, Patna, Regulation 4 and Regulation 10 provide the guidelines for the members and sub-members. They have submitted that the action on the part of the Apex Bank was bad. They have refused to say anything about the conduct of the Registrar and the manner in which he was conducting the proceedings. Learned counsel for the State very vehemently submitted that the Registrar was justified in taking action under sub-section-(1) of Section 41 of the Co-operative Society Act and as there was nothing wrong in it, Annexure-1 cannot be interfered with. When this Court put a pointed question to him that the Registrar knowing well that order dated 5.7.2004 was under challenge before him then without deciding the validity and legality of the said order, how could he rely upon the same and issue annexure-1, learned counsel for the State submitted that the Registrar acts in his dual capacity, on one side he has to hear the cases in judicial capacity and while issuing Annexure-1, he has to act in administrative capacity.

6. I have heard learned counsel for the parties.

7. Annexure-1, the show cause notice dated 23.7.2004 issued by the Registrar Co-operative Society, Bihar says that the Managing Director, Bihar State Co-operative Bank Limited, Patna vide his order No. 356 dated 5.7.2004 has levelled serious allegations against the management of Patliputra Central Co-operative Bank Ltd., Patna and has suspended the affiliation with the Apex Bank and has also made recommendations that the present Board of Directors be suspended and fresh election be held. He also observed that from the letter of the Apex Bank it appeared that (1) Patliputra Central Co-operative Bank was violating its by-laws, (2) without permission of the Registrar, Co-operative Society it has extended loan facility contrary to by-law No. 50 in favour of the Bihar State Housing Co-operative Federation and (3), despite availability of the resources and funds it has distributed less loan. He further observed that the Management of the Bank should show cause on or before 23.8.2004 that why in accordance with Section 41 of Co-operative Society Act, 1935 in accordance with recommendations made by the Apex Bank, the Board of Directors be not

suspended.

8. Section 41(1) has undergone an amendment under Bihar Act No. 10 of 2002. It says that if, in the opinion of Registrar, the Managing Committee of any registered society, in which the economic interest of the Government is apparently clear-after giving opportunity to the Managing Committee to state its objections- by order in writing suspend the Managing Committee for a period not exceeding six months.

9. The first and foremost requirement even for issuing the show cause notice is the satisfaction to be recorded by the Registrar and the opinion to be formed. In the present matter a fair reading and understanding of Annexure-1 would make it clear that the Registrar neither recorded his satisfaction nor formed his opinion. He simply observed that certain recommendations have been received from the Apex Bank, serious charges were levelled, particular facts were floating on the surface from the details narrated in the said letters/ recommendations and as to why the Board of Directors be not suspended in light of the recommendations. I repeatedly asked the learned counsel for the State that without recording the satisfaction or forming any opinion simply on the basis of recommendations how could the Registrar issue such a notice, learned counsel for the State went on submitting that the Registrar was absolutely justified in issuing the notice. I must record that sometimes some body is required to be honest at least to the Court. I am sorry to record that nobody even at sometimes is honest to the Court. When a counsel represents the party it is expected of him that he would defend the acts and actions of the party but at the same time he being an officer of the Court is obliged to bring correct legal position before the Court. The action of the Registrar is patently illegal and gives force to the allegation and weight to the submission that in league with the Managing Director of the Apex Bank Annexure-1 was issued.

10. The submission of the counsel for the State that the Respondent Registrar was acting in dual capacity would not cut any ice. All of us know that many administrative officers have to discharge judicial functions also but no officer can honestly say that the facts which are brought to his notice on the administrative side are not being used by him when he is hearing the matters on the judicial side and he would forget the facts brought to his notice on the judicial side when he is dealing with the matters on the administrative side. The Registrar does not say that he did not know about the pendency of the matter before him wherein validity of Annexure-2 was under challenge. He proposes to say that Annexure-2 was challenged on the judicial side therefore that was to be considered on the judicial side but at the same time relying upon the recommendations which Were under challenge before him he could still issue notice contained in Annexure-1. I must condemn the conduct of the Registrar, I must observe that he is playing dishonest, I must observe that he being in the league with the Managing Director or at the behest of some others issued notice contained in Annexure-1. The notice contained in Annexure-1 is patently illegal. It does not satisfy the

requirements of law nor it meets the mandate as contained under sub-section (1) of Section 41 of the Act. In absence of the satisfaction recorded and the opinion formed by the Registrar, Annexure-1 cannot be allowed to stand. It deserves to and is accordingly quashed.

11. During the course of the arguments the correctness, validity and propriety of Annexure-2 was also challenged. It was submitted by the learned counsel for the petitioner that the Managing Director was not justified in issuing the order or making the recommendations in his capacity as Managing Director because such are the functions of the Board of Directors and General Body of the Apex Bank. Learned counsel for the Apex Bank was unable to meet this question. It was submitted on behalf of the petitioner that the order, Annexure-2 which leads to Civil consequences and gives a dent to the reputation of the petitioner in the commercial and business world was issued without any opportunity of hearing to the petitioner. Learned counsel for the Respondents-Bank was not in a position to satisfy me that before issuance of Annexure-2 any notice to show cause was ever issued to the petitioner. I will simply refer the matter back to the Registrar for hearing cases number 105/04 and 106/04. However, I have to simply record the facts and as the matter is pending consideration before the Registrar in case No. 105/04 and 106/04 he will have to look into the correctness, validity, propriety and justifiability of Annexure-2. It would be for the Registrar to see that without the authority from the Board of Directors or a resolution by the General Body of the Apex Bank without there being any resolution by the Board of Directors, could the Managing Director in his independent capacity issue Annexure-2. It would be also for the Registrar to examine the question that whether Annexure 2 could have been issued without affording any opportunity of hearing to the PCCB and whether the Managing Director was acting honest in issuing such directions under which the Patliputra Central Co-operative Bank was to suffer a dent to its reputation in the commercial world.

12. Ordinarily, I would not have awarded cost but in the present matter the State counsel so also counsel for the Apex Bank were vehemently reiterating the stand taken by them and were not ready even to submit before the Court that a wrong action has been taken by the Registrar and the Managing Director of the Apex Bank. I must award cost of Rs. 10,000/- against each of these two authorities. The State so also the Apex Bank each shall pay Rs. 10,000/- to the petitioner as costs.

13. It is expected of the Registrar, Co-operative Society that without becoming tool in the hands of higher ups or his colleagues he must discharge his judicial functions in accordance with law and facts recorded aforesaid and the observations made above. It is further directed that till final disposal of case Nos. 105 and 106 of 2004 the effect and operation of Annexure 2 shall remain in abeyance.