

(2013) 08 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8178 of 2013

Ram Chandra Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 4 BBCJ 93 : (2013) 4 BLJud 200

Hon'ble Judges : Jayanandan Singh, J.

Bench : Single Bench

Advocate : Mr. Deo Narayan Yadav and Mr. Saroj Kumar Advocates, for the Petitioners; Mr. P.K. Verma, A.C. to S.C.26, for the Respondents

Final Decision : Allowed

Judgement

Jayanandan Singh, J.—By the impugned order of the District Cooperative Officer, as contained in Annexure-10, Managing Committee of Primary Agriculture Cooperative Society (PACS) of Sohans Panchayat has been superseded and the Cooperative Extension Officer has been appointed as Manager for six months or till a new Managing Committee is elected, whichever may be earlier. Petitioner, Chairman of the PACS, has challenged the said order of the District Cooperative Officer.

2. Submission of learned counsel for the petitioner is that the impugned order of the District Cooperative Officer is based primarily on the ground that nine members of the Managing Committee had submitted their resignation. Hence, the Managing Committee had come in minority. He submits that this ground, mentioned in the impugned order for superseding the Managing Committee of the Society, is a non est ground. He refers to Annexure-4, a proceeding of the General Body Meeting of the Society dated 10.5.2012, to show that on account of absence from meeting for the last four days 11 members of the Managing Committee were removed and new members were inducted. He submits that the members, who had been removed earlier, had represented before the District Cooperative Officer that they had resigned. Therefore, the District Cooperative

Officer got a wrong impression that the Managing Committee had come in minority.

3. Counter affidavit and supplementary counter affidavit have been filed in this case. Learned counsel for the respondents refers to paragraph 8 of the supplementary counter affidavit to submit that there was no provision in the Act or the Rules that the members of the Managing Committee elected by the Bihar State Election Authority could be removed and replaced by the Society. He submits that it was only the Bihar State Election Authority which was the competent authority to conduct election of the Managing Committee of the Society.

4. In view of this pleading, this Court had adjourned the matter on 12.8.2013 to enable learned counsels for the parties to examine the legal position and address the Court.

5. Learned counsel for the petitioner, after thoroughly examining the Act, Rules and By-laws, refers to clause (2) of sub Rule (1) of Rule 21 of the Bihar Cooperative Societies Rules 1959 and submits that in terms of this clause (2), General Body of the Society has been empowered to exercise all powers and perform all duties prescribed for it in the by-laws. Then, he refers to By-laws 26 framed for Primary Agriculture Cooperative Society (PACS). He refers to clause (of By-laws 26 and submits that under this clause the Society has been empowered to nominate other persons for the Managing Committee in place of such members, who were not attending meeting of the Society continuously for last three days. He submits that under this Power, the Society in its meeting dated 10.5.2012 had removed the members, who had not attended the meeting since last four days and had nominated new members.

6. Learned counsel appearing for the respondents refers to proviso to sub rule (4) of Rule 20 to submit that in an extra ordinary general meeting the Society had no power to elect members of the Managing Committee or office bearers thereof.

7. After hearing learned counsel for the parties and after going through the provisions referred to by them, this Court is of the view that proviso to sub rule (4) of Rule 20 does not apply in the case. Firstly, there is nothing on record to show that the meeting held on 10.5.2012 was an extra ordinary general meeting. Secondly, case in hand was not a case of election of new members of the Society. It was a case where members already elected had not attended the meeting since last four consecutive dates and hence, in terms of clause d of By-laws 26 read with sub-clause (2) of clause 1 of Rule 21, Society had the power to remove them and replace them by new members.

8. In the circumstances, this Court finds that the impugned order of the District Cooperative Officer is based on non est ground. The same is accordingly quashed. It may also be pointed out that in any case order has died its natural death as the Cooperative Extension Officer was appointed as Manager for six

months only or till a new Managing Committee was elected, whichever was earlier. Learned counsels submit that new Managing Committee has not been elected. Thus, the order having been passed on 10.12.2012 has lost its force after six months.

9. Writ application is accordingly allowed. The Managing Committee, which has been superseded by the impugned order of District Cooperative Officer, shall stand revived. Hence, the District Cooperative Officer is directed to see to it that the charge of the Society is handed over to the Managing Committee within two weeks from the date of receipt/production of a copy of this order.