(2016) 01 PAT CK 0042

In the Patna High Court

Case No : Letters Patent Appeal No. 378 of 2014 in Civil Writ Jurisdiction Case No. 15382 of 2013

Ram Sanjivan Prasad Yadav APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 33, Section 40, Section 41, Section 41(5), Section 46(2)
Constitution of India, 1950 — Article 226
Multi-State Cooperative Societies Act, 2002 — Section 2

Citation : (2016) 01 PAT CK 0042

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Chandra Bhushan Das, Advocate, for the Appellant; Vivekanand Singh, AC to GP-8, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—1. This is an appeal preferred, under Clause 10 of the Letters Patent of this Court, against the order, dated 21.11.2013, passed, in CWJC No. 15382 of 2013, by a learned single Judge of this Court, whereby the learned single Judge has dismissed the writ application filed by the appellant under Article 226 of the Constitution of India.

2. The appellant had sought for issuance of a writ, in the nature of certiorari, quashing an order, dated 02.04.2013, passed by the Managing Director, Co-operative Milk Federation Limited, Patna (hereinafter referred to as the ''COMFED''), whereby, in exercise of power conferred under Section 41(5) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the Act of 1935), the Managing Committee of Tirhut Dugdh Utpadak Sahkari Sangh Limited, Muzaffarpur (hereinafter referred to as ''TIMUL'') came to be superseded. The appellant had also challenged, in the said writ proceeding, the letter, dated 19.07.2013, issued by the Chief Election Officer, Bihar State Election

Authority, Patna, directing the Managing Director, COMFED and other officials to prepare the Electoral Roll for the purpose of holding an election afresh so as to constitute the Managing Committee of the TIMUL. The appellant had, in the writ application, also sought for issuance of a writ, in the nature of mandamus, directing the respondents to restore the powers and functions of the Managing Committee of TIMUL by ordering status quo ante with effect from 02.04.2013.

3. Certain facts are not in dispute.

4. The appellant-writ petitioner was one of the members of TIMUL and was elected, on 21.12.2009, as its Chairman for a period of five years. Section 33 of the Act of 1935 provides for auditing of the accounts of Co-operative Society. Section 40 of the Act of 1935 confers, upon the Registrar of the Co-operative Societies, power to take surcharge, if it is found, at the audit, that any person, who has taken part in the organization or management of the Society, or any of its past and present Officer had (i) made any payment, which is contrary to law or rules, (ii) by reason of culpable negligence or misconduct, involved the Society in any loss or deficiency (iii) failed to bring into account any sum, which ought to have been brought into account, or (iv) misappropriated or fraudulently retained any property of the Society.

5. In exercise of the powers under Section 40 of the Act of 1935, a surcharge proceeding was drawn by the Registrar of the Co-operative Societies against the Managing Committee of TIMUL, which was challenged in this Court, by filing a writ application, under Article 226 of the Constitution of India, giving rise to CWJC No. 916 of 2013. This Court disposed of the writ application directing the Principal Secretary of the Co-operative Department, Government of Bihar, to pass final order on the surcharge proceeding, whereupon the Registrar, in exercise of his powers under the provisions of the Act of 1935, fixed the amount of surcharge payable against all the members of the Managing Committee.

6. Section 41 of the Act of 1935 provides for dissolution of the Managing Committee if, in the opinion of the Registrar, Co-operative Societies, it is found that the members of the Committee have been mismanaging the affairs of the society or persistently making defaults or is or are being negligent in performance of duties imposed on it by this Act, the Rules or the bye laws, the Registrar may, after giving opportunity to the Managing Committee, to state its objection if any and after obtaining opinion within twenty one days from the Chief executive of the affiliating Federation/Society, by order, in writing, suspend the Managing Committee for a period not exceeding six months.

7. By virtue of the decision taken by the Principal Secretary to the Department fixing surcharge amount payable against all the members of the Managing Committee, because of the irregularities detected in course of audit, the members of the Managing Committee of TIMUL became incompetent to hold their post by operation of Rule 23 read with Rule 24 of the Bihar Co-operative Societies Rules, 1959.

8. The Managing Director, COMFED, in these circumstance, issued the order, dated 02.04.2013, holding the Director and Members of the Managing Committee of TIMUL to have lost their eligibility and were, thus, not competent to continue on their respective posts and, therefore, exercising power under Section 41(5) of the Act of 1935, superseded the Managing Committee. In order to fill up vacuum created by the loss of eligibility of the Board of Directors and Members of TIMUL to hold their posts, the Managing Director, COMFED, appointed Dr. Arun Kashinath Kulkarni, the General Manager, COMFED, as Administrator of the TIMUL.

9. Subsequent to the order, dated 02.04.2013, the Chief Election Officer, Bihar State Election Authority, Patna, proceeded with the work of preparation of Electoral Roll for election as Members of the Managing Committee of TIMUL by letter, dated 19.07.2013. The appellant, challenging the said order, dated 02.04.2013, passed by the Managing Director, COMFED and letter, dated 19.07.2013, preferred the writ application, giving rise to CWJC No. 15382 of 2013, which came to be dismissed by a learned single Judge of this Court by the order under appeal, dated 21.11.2013.

10. The sole ground on which the appellant has sought to challenge the order passed by the learned single Judge is that TIMUL is one of the Member Societies of the COMFED. The COMFED has been held to be a Multi-State Co-operative Society within the meaning of Section 2 of the Multi-State Co-operative Societies Act, 2002. It is, accordingly, the contention of the appellant that TIMUL, which is one of the member Societies of COMFED, should also be treated as a Multi-State Co-operative Society under the Multi State Co-operative Societies Act, 2002. If TIMUL is treated as a Multi-State Co-operative Society, there would have been no question of exercise of power by the Managing Director, COMFED, by issuing the impugned order, dated 02.04.2013, under Section 41(5) of the Act of 1935, the said provisions being not applicable to Multi-State Cooperative Societies Act, 2002.

11. We have heard Mr. Chandra Bhushan Das, learned counsel, appearing on behalf of the appellant, and Mr. Rajiv Ranjan Prasad, learned counsel, representing COMFED. We have also heard Mr. Vivekanand Singh, learned Assistant Counsel to Government Pleader No. 8, representing the State of Bihar.

12. Mr. Das, learned counsel appearing on behalf of the appellant, has reiterated the plea that TIMUL is a multi-State Co-operative Society within the meaning of Section 2 of the Multi -State Cooperative Societies Act, 2002, and, therefore, the provisions of the Act of 1935 do not govern the functioning of TIMUL. He has, accordingly, submitted that on the ground of pendency of surcharge proceeding, the Managing Director, COMFED, could not have exercised power under Section 41(5) of the Act of 1935, and superseded the Managing Committee of TIMUL,.

13. Mr. Rajiv Ranjan Prasad, learned counsel representing COMFED, on the other hand, has submitted that the area of operation of TIMUL is within the State of

Bihar and, therefore, Multi-State Co-operative Societies Act, 2002, has no applicability in respect of TIMUL as the said Act applies only to such a Co-operative Society, which either has area of operation not confined to one State or has area of operation in more that one States. Mr. Prasad, learned Counsel, has submitted that by a specific notification issued by the Cooperative Department, Government of Bihar, dated 31.10.1996, in exercise of power under Section 46(2) of the Bihar State Cooperative Societies Act, 1935, the Managing Director, COMFED, has been vested with the powers of Registrar exercisable under various provisions of the said Act including the provisions as contained in Section 41 of the Act and, therefore, there is no illegality in the order, which was challenged in the writ proceeding.

14. We do not find any merit in the submission of the appellant that TIMUL is a Multi State Cooperative Societies within the meaning of Section 2 of the Multi State Cooperative Societies Act, 2002, inasmuch as area of operation of TIMUL is, admittedly, within the State of Bihar. The status of COMFED, as Multi-State Cooperative Society, will not determine the status of TIMUL merely because TIMUL is a Member Society of COMFED. The TIMUL is, in our considered view, governed by the Bihar State Cooperative Societies Act, 1935.

15. We have perused the Notification, dated 31.10.1996, issued by the Cooperative Department, Government of Bihar, brought on record by way of Annexure-A to the counter affidavit filed in the writ proceeding, whereunder the Managing Director, COMFED, has been vested with the powers to be exercised under various provisions of the said Act including Section 41 with respect to the cooperative societies like TIMUL.

16. In the absence of any dispute that a surcharge proceeding was pending against the Members of the Managing Committee of TIMUL, they, by operation of Rule 23 read with Rule 24 of the Bihar State Cooperative Societies Rules, 1959, became subject to disqualification.

17. We, therefore, do not find any infirmity in the order under appeal.

18. It has been pointed out to us that during the pendency of the writ proceeding itself, election process had commenced and a new Managing Committee has been constituted in the month of October, 2013.

19. In view of the above, this intra Court appeal does not deserve admission, which is, accordingly, dismissed.

I.A. Ansari, Actg. C.J.

I agree.

