
(1968) 10 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 537 of 1968

Ramdeni Ram Gupta and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-1968

Acts Referred:

Bihar Co-operative Societies Rules, 1959 — Rule 39(1), 39(2), 39(5)

Citation : (1969) 17 BLJR 309

Hon'ble Judges : S.C. Misra, C.J.;B.D. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Misra, C.J. and B.D. Singh, J.—The main question raised in this application is the legality of the action taken under Sub-rule (2) of Rule 39 of the Bihar Co-operative Societies Rules, which provide for compulsory amalgamation of the Societies. In the present case, it is stated that notice has been issued by the Assistant Registrar Co-operative Societies, Bettiah, under Sub-rule (1) of Rule 39, requiring the managing committees of the Societies concerned to convene general meetings of the share holders and creditors thereof for considering the proposal to amalgamate the Societies into a new Society. Being aggrieved by the order of the Assistant Registrar, an appeal has been preferred by petitioner No. 2 before the Registrar under Clause (i) of Sub-rule (4) of the rule, challenging the validity of the order for convening the meetings of the managing committees of the Societies concerned. The Assistant Registrar, however, before the disposal of the appeal, has ordered the actual amalgamation of the Societies, Learned Counsel for the petitioners has urged that since Sub-rule (5) of Rule 39 provides that no action under Sub-rule (2) shall be taken until the disposal of the appeal under Sub-rule (4), the Assistant Registrar's step is arbitrary and illegal and, in the circumstances, this Court should interfere by quashing the order passed by the Assistant Registrar.

2. It may be stated that when Sub-rule (5) prohibits any step being taken under

Sub-rule (2) relating to the actual amalgamation of the Societies until the disposal of the appeal under Sub-rule (4) which has reference to Sub-rule (1), so far as the appeal is concerned, the matter has been regarded to be one relating to the subject matter of the amalgamation proceedings themselves, various steps of which have been laid down in Sub-rules (1) and (2) of Rule 39. During the pendency of the appeal, therefore, if any step is taken by any officer subordinate to the Registrar (in this case the Assistant Registrar) which he is not competent to take so long as the appeal from his order is pending before the Registrar, obviously, it is a matter connected with the appeal itself. In the circumstances, the proper course for the party aggrieved by an action taken by the Assistant Registrar as in this case or when the appeal is to be preferred to the State Government against an order of the Registrar, to which the appeal is to be preferred would be to bring the matter to the notice of that authority, so that proper direction may be issued for staying any action taken by the subordinate authority which will be in violation of Sub-rule (5) of Rule 39. The petitioner however, instead of moving the Registrar and bringing to his notice the action of the Assistant Registrar which is in violation of Sub-rule (5) has thought it proper to move this Court. It is true, no doubt, that Sub-rule (5) is in clear terms and it is not intelligible why the Assistant Registrar took any action in giving effect to the compulsory amalgamation even when there was an appeal preferred against his order pending before the Registrar. As it is, however, so far as this Court is concerned, it is now well settled that the High Court in exercise of its writ jurisdiction will not ordinarily interfere with any order or decision of an authority or tribunal which under the statute constituting the authority or tribunal can be rectified by an appellate authority. The same principle will apply to this case. Any illegality committed by the Assistant Registrar as against Sub-rule (5) can well be rectified by the Registrar and, that being the position, this Court should not be taken to be the forum for interfering with any illegality committed by an authority subordinate to the one proceeding in appeal against the order passed by the subordinate authority. In our opinion, therefore, the proper thing to be done by the petitioners was not to move this Court for the exercise of writ jurisdiction to quash this order but to raise this point by way of an application before the Registrar himself who would be fully competent to deal with this matter. For this Court to interfere would amount to by passing the Registrar himself who is the appellate authority. This would be wholly unjustified and in some cases may result in injustice.

3. Learned Counsel for the petitioners has, however, contended that the Registrar in this instance, no doubt, would be the appellate authority and in this case an appeal has been preferred to him as against the order under Sub-rule (1) which provides for requisitioning a meeting of the managing committees of the Societies concerned, calling the shareholders and creditors of the Societies together for the purpose of considering a proposal to amalgamate the Societies into a new Society. If an order is passed by the Assistant Registrar under Sub-rule (5), it relates, obviously, to the order under Sub-rule (2) which provides for

a final decision being taken by the Registrar in the matter of amalgamation of the Societies. In the present case that stage has not arisen, because the appeal has been preferred in respect of the order passed under Sub-rule (1) itself. Whatever might be the position since an action has been taken by the Assistant Registrar under Sub-rule (5) which relates to Sub-rule (2), concerning a final decision as to amalgamation of the Societies, such an action can be interfered with only by the Registrar before whom the appeal against the order under Sub-rule (1) is pending. It is, no doubt, true that Sub-rule (4) providing for an appeal, against the order passed under Sub-rule (1), in fact, should have referred to Sub-rule (2) or in any case to both Sub-rules (1) and (2), because an appeal merely against a requisition passed by the Assistant Registrar for convening the meeting of the shareholders and creditors can hardly be regarded as a ground causing any grievance to any party affected by that. Any person can be affected only when a decision is taken under Sub-rule (2) amalgamating the Societies or refusing to amalgamate the Societies, which would be the proper subject matter of appeal before the Registrar. That is a matter to which the attention of the appropriate authority is drawn. So far as the disposal of the present application is concerned, this will hardly be a material consideration, because, as I have said before, even an action under Sub-rule (2) as provided in Sub-rule (5), relates to the subject matter of a proceeding for the amalgamation of the Societies in regard to which the appeal is pending before the Registrar under Sub-rule (1). Therefore, that authority would be competent to pass any consequential order in regard to the subject matter of the appeal. The conclusion, therefore, is that the remedy sought for in this and a batch of other applications which have been directed against a similar order passed by the Assistant Registrar does not lie in this Court, but it should be sought before the Registrar as in the present case or as against his order before the State Government which is the appellate authority under Sub-rule (4) Clause (ii).

4. Learned Counsel for the petitioners has also raised the question that the effect of the compulsory amalgamation of the Societies is to abrogate or to modify the bye-laws of each Society which is not permissible in view of Sections 6 and 26 of the Act. Section 26 empowers the Registrar to direct amendment of the bye-laws of a registered Society, but Section 6 Sub-section (2) provides :-

(2) The State Government may, by general or special order published in the official Gazette confer, -

(a) on any person appointed under Sub-section (1), to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers u/s 26....

Learned Counsel has contended that although u/s 26 the Registrar has got the power to amend the bye-laws of any Co-operative Society, the Assistant Registrar, who has passed the order in the present case, is not competent to do so, as the power u/s 26 is to be exclusively exercise-able by the Registrar and not by the Assistant Registrar to whom certain powers have been delegated u/s 6 of the Act. In the circumstances, therefore, the action of the Assistant Registrar

is to be struck down even on that ground. The answer to this contention, however, is that what the Assistant Registrar has done is not to modify or amend the bye laws of any registered Society. All that he has done is to convene a meeting of the share-holders and creditors for deciding whether the Societies in question should be amalgamated; and even assuming that an order of amalgamation is passed, that will not. ipso facto have the effect of modifying the bye-laws. No doubt, on account of the new situation in which the Societies find themselves, the bye-laws of an individual Society may be affected and some of them may have to be modified, but that is a position in which the Registrar himself u/s 26 will exercise his powers and modify them accordingly. The argument, therefore that the Assistant Registrar's act in amalgamating the Societies necessarily results in modifying the bye-laws which will run counter to the provisions of Sections 6 and 26 of the Act cannot be taken to be valid. This contention also, therefore, fails and must be rejected.

5. This application therefore, fails and must be dismissed.