
(1992) 07 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2119 of 1992

Ramsakha Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-1992

Acts Referred:

Citation : (1992) 07 PAT CK 0039

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioner raised an election dispute u/s 48 of the Bihar Co-operative Societies Act, 1935 (in short "the Act"). The Assistant Registrar, Co-operative Societies, exercising the powers of the Registrar, set aside the election of the office bearers of the Managing Committee of Shyampur-Malpur-Malipur Primary Agriculture Credit Society Ltd. (in short "the Society") held on December 4, 1991 and directed that the steps be taken for appointment of Administrator to carry on the business of the Society. The order was challenged by way of appeal before the State Government. The Minister Incharge, Co operation has admitted the appeal and stayed the operation of the order of the Assistant Registrar. The order of the Minister dated February 25, 1992, copy whereof has been marked Annexure-1 is under challenge.

2. Mr. Ajayendu Bose, learned Counsel for the Petitioner raised a short point. Counsel submitted that the Minister has no jurisdiction to interfere with the order of the Assistant Registrar u/s 48. Relying on Chandeshwar Prasad and Vs. State of Bihar and Others, it was submitted that the proceeding u/s 48 and the order passed therein are judicial in character. The Act provides for a complete machinery including right of appeal and revision before the prescribed Authority to decide the dispute. Section 65-A conferring power of review upon the State Government having been struck down, the Minister is alien to the scheme envisaged under the Act. Mr. Yogendra Mishra appearing for Respondent No. 4, Appellant before the Minister, on the other hand, took the stand that the impugned order has been passed in exercise of power u/s 41(6) of the Act. He

submitted that if elections are not held within time, in terms of the relevant provisions, deemed supersession of the Managing Committee takes place within the meaning of Section 41 making the provisions of Sub-section (6) applicable. According to him, in the instant case, elections were not held within the prescribed period and the Managing Committee of the Society will be deemed to have been superseded with effect from January 1, 1992. Thus, appeal before the State Government u/s 41(6) was maintainable and the Minister was competent to pass the impugned order.

3. The relevant provisions of the Act may be noticed at this stage. Section 2(bb) defines "co-operative year" to mean a year beginning (Sic)th the 1st of April and ending on the 30th March. Section 14(9) provides that notwithstanding anything contained in the rules or (Sic)e laws, the term of members and the office (Sic)arers of the Managing Committee of a registered Society shall be three co-operative years, (sic)d they shall continue to hold office after (Sic)piry of their term till the elections are held for nine months from the close of the co-operative year, whichever is earlier. Since the (Sic)atroversy rests upon the construction of the provision contained in Section 14(10), it would be useful to bodily refer to the said provision, omitting its provisos.

If, for any reason, elections are not held within the said period after expiry of the term of the members and the office bearers of the managing committee the committee shall be deemed to have been superseded with effect from the said date within the meaning of Section 41, and thereafter the business of the society shall be carried on in the manner provided by the section.

Section 41 contains provisions regarding (Sic)ssolution of the Managing Committee. Sub-section (1), inter alia, provides that if the Registrar is of the opinion that the Managing Committee of a registered Society is mismanaging its affairs or has failed to sufficiently (Sic)prove its affair or is persistently making fault in performance of the duties, he may, after giving an opportunity to submit objection, if any, dissolve the Managing Committee for certain period as mentioned therein. Sub-section (3) lays down that when a Managing Committee is dissolved under Sub-section (1), the Registrar shall appoint Administrator to carry on the business of the Society subject to any direction issued by the Registrar from time to time. Sub-section (6) said be provision under which the impugned order has been passed, may also be referred to in extenso:

An appeal shall lie from an order of the Registrar under Sub-section (1) to the State Government on application made by any member of the Managing Committee within three months from the date of communication of the order to the registered society concerned. The order of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar shall be final.

4. It is not in dispute that the term of the members and the office bearers of the Managing Committee of the Society expired, after completing the period of three

co-operative years, on March 31, 1991 but in terms of the provision contained in Section 14(9) they continued to hold office during the extended period of nine months expiring on December 31, 1991. It is also not in dispute that elections were held before expiry of the extended or grace period on December 4, 1991 but set aside in an election dispute on February 15, 1992. The question for consideration is where elections are held within the prescribed period but set aside in an election dispute, can it be said that "elections are not held" so as to attract the mischief of Section 14(10). Counsel for the Respondent conceded that if the question is answered in the negative, Section 41(6) will have no application and in that event the Minister shall have no jurisdiction.

5. The ordinary rule of construction of statutes is that their words must be interpreted in their natural grammatical sense unless that leads to some absurdity or inconsistency or unless there be something in the context, or in the object of the statute to suggest to the contrary. As was observed in *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, when the language is plain and unambiguous and admits of only one meaning no question of construction arises, for the Act speaks for itself. Sub-section (10) of Section 14 begins with the words -"If for any reason" elections are not held. Thus on its plain natural, grammatical meaning it can be said that the consequence envisaged therein would set in only if the elections are not held at all. Nothing has been pointed out to us to suggest that this meaning would lead to any absurdity, inconsistency or contradiction. The position, perhaps, would have been different if the elections were held to be null and void and, therefore, non-existent in the eye of law. However, no such case has been pleaded. No other legal fiction was brought to our notice which would obliterate or wipe out something which has taken place as a fact. If an election is set aside in an election dispute, what is really set aside is the result of the election and not the holding of the election itself. In my opinion, therefore, answer to the question posed above has to be given in the negative.

6. Section 14(10) contemplates a situation where by reason of lapse of time the managing committee dies its civil death cannot come back to life. Affairs of a registered Society, a body corporate with perpetual succession, cannot, however, be left in lurch. A provision has, therefore, been made that "thereafter the business of the Society shall be carried on in the manner provided by the section", namely Section 41. At this stage, briefly recapitulating the provisions of Section 41 it would appear that the provision runs into several parts: Sub-sections (1) and (5) provide for dissolution of managing committee of a registered Society on the grounds and in the circumstances mentioned therein. Sub-section (2) provides for its suspension. Sub-sections (3) to (5) and (7) contain the provisions regarding appointment of Administrator and as to how the business of the Society has to be carried on. Sub-section (6) provides for appeal against the order of dissolution to the State Government. Sub-section (8) keeps intact the power of the Registrar to order winding up of the Society notwithstanding the dissolution of its managing committee.

7. Once the term of the members and office bearers of the managing committee finally expires and the managing committee "dies", a deemed supersession takes effect. Conditions precedent or circumstances envisaged therein are different from those in Sub-sections (1) or (5) of Section 41. But in either case, in order to carry on the business of the Society, some arrangement has to be made. Appointment of Administrator is kind of interim arrangement which becomes imperative in the circumstance. Use of the words "in the manner provided by the section" occurring in Section 14(10), to my mind, unambiguously indicates that reference to Section 41 in the Sub-section means that only those provisions of that section can be said to be applicable which deal with the manner in which "the business" of the society shall be carried on. The other provisions not dealing with the manner in which the business has to be carried on, cannot be said to be relevant. Thus, in my opinion, the whole of Section 41 particularly Sub-section (6) cannot be said to be applicable even in a case where Section 14(10) applies.

8. Another aspect worth noticing is that Sub-section (6) of Section 41 provides for an appeal from the order of the Registrar under Sub-section (1). In other words, if the Registrar passes an order of dissolution of the managing committee, the person aggrieved has a right of appeal to the State Government. "Deemed" supersession u/s 14(10) is not subject to appeal. Therefore, simply because the managing committee is deemed to be superseded "within the meaning of Section 41", it cannot be said that appeal shall lie to the State Government. In the instant case, what has been challenged before the Minister is not any order of dissolution of managing committee, but an order by which elections have been set aside. In my view, therefore, the impugned appeal before the Minister is not maintainable.

9. Mr. Yogendra Mishra submitted that if Section 14(10) is held to be inapplicable the order passed by the Assistant Registrar, while setting aside the elections, directing that steps be taken for appointment of Administrator and the subsequent order of the Joint Registrar dated February, 24, 1992 contained in Annexure A/4 to the counter affidavit, appointing an Administrator to carry on the business of the Society could not have been passed. He submitted that Section 14(10) will apply as a whole or not at all. The submission, to my mind, is wholly misconceived. The validity of an order cannot be tested on the basis of consequential order which, in the circumstances, became necessary. It would appear that the election dispute had taken its own time for disposal and by the time final orders were passed, the extended term of the members and the office bearers of the managing committee had expired. Undisputedly, the old managing committee could not have been revived. In such a situation it became imperative to make interim arrangement, lest there would have been stalemate in the functioning of the society. There was virtually no alternative but to appoint the Administrator. In my view, in order to trace the source of power, one need not necessarily look to Sub-section (10), this flows as a corollary of Sub-section (9) of Section 14.

10. My conclusions, therefore, are (a) where elections of the members and office bearers of the managing committee are actually held before the expiry of their term but set aside in an election dispute, elections not being null and void, Section 14(10) of the Act per se will not be applicable, (b) Even where elections are not held within the prescribed period and the managing committee is deemed to be superseded u/s 14(10), it will not be subject to appeal u/s 41(6).

11. On the basis of aforesaid discussions and conclusions the impugned proceeding before the Minister-in-charge-Cooperation is held to be not maintainable and, accordingly, the order dated February 25, 1992, contained in Annexure I, is quashed. The writ petition is allowed but without any order as to cost.

Shamim Ahsan, J.

12. I agree.