

(2016) 01 PAT CK 0106

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14125 of 2015

Renu Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 48

Citation : (2016) 1 PLJR 844

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Rakesh Kumar Jha, Advocate, for the Appellant; Raju Giri, GP-30, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—1. Heard Mr. Rakesh Kumar Jha, learned counsel appearing on behalf of the petitioners, Mr. Nikhil Agrawal, Assisting Counsel to G.P.-30 for the State and Mr. Mukesh Kant appearing for the respondent No. 7.

2. The petitioners are aggrieved by the order dated 17.7.2015/27.7.2015 passed by the Additional Registrar, Cooperative Society in Review Case No. 2 of 2015 whereby the Additional Registrar while reviewing his order dated 11.2.2015/26.2.2015 passed in Miscellaneous Case No. 330 of 2014 has referred the membership issue of 151 persons including the writ petitioners to the Block Development Officer, Paliganj, District-Patna to adjudicate thereon and proceeding wherefrom, the Block Development Officer upon consideration of the matter has, vide letter bearing No. 1408 dated 18.8.2015, has opined that the membership of these 151 persons was granted without observance of the prescribed procedure and which has affected the election.

3. Mr. Rakesh Kumar Jha, learned counsel for the petitioners submits that not only the order passed on review by the Additional Registrar impugned at Annexure-6 is contrary to the powers of review but the illegality has been

perpetuated by the Block Development Officer in giving his opinion vide letter dated 18.8.2015 impugned at Annexure-7 to even comment on the validity of the election so held. The issue raised by Mr. Jha stands noted in the order of this Court passed on 16.9.2015 and which runs thus:

"(a) The issue of membership was never raised by the review petitioner at any stage of election to question the membership of 151 persons.

(b) The review petitioner having contested the election on the same voter list has challenged the same after the defeat.

(c) The membership issue was available to the review petitioner when the original case was being considered in Misc. Case No. 330 of 2014 but never raised.

(d) The issue raised in review petition is foreign to the original contest.

(e) The issue of membership could have been adjudicated upon by the Additional Registrar himself as a delegate of the Registrar and which power he could not have sub delegated; and

(f) The Block Development Officer has exceeded his jurisdiction in adjudicating on the issue of membership as well as in recommending for cancellation of election."

4. Responding to the notice issued by this Court that the State has filed their affidavit justifying the impugned order and Mr. Mukesh Kant appearing for the applicant before the statutory authority i.e. the respondent No. 7 has submitted that since the statutory prescriptions provided for enrolment of members as found in Rule 7(4) of the Bihar Cooperative Societies Rules, 1959 framed under the Bihar Cooperative Societies Act, 1935 stood violated hence it prompted the petitioner to raise the same vide Miscellaneous Case No. 330 of 2014 and since the issues raised were not taken note of by the Additional Registrar vide order passed on 11.2.2015/26.2.2015 present at Annexure-3 that the review application was filed giving rise to Review Case No. 2 of 2015 and which has been allowed by the impugned order placed at Annexure-6. He submits that the opinion expressed by the Additional Registrar to allow the review stands confirmed in the finding recorded by the Block Development Officer impugned at Annexure-7 which does not call for any interference.

5. I have heard learned counsel for the parties and I have perused the records. While Mr. Jha appearing for the petitioners has questioned the order passed on the review on grounds that it is beyond the parameters of review and founded on fresh grounds, it is the defence taken by the counsel for the respondents to justify the impugned order that since the issue raised required an answer, which was not forthcoming in the original order hence the orders so passed and which suffers no infirmity. In between, the respondent No. 7 has not been able to justify his laches in not questioning the membership so granted to these 151 persons prior to the election before the appropriate forum i.e. the Registrar under Section 48 of "the Act". Whether the membership granted to these 151

persons was in tune with the statutory prescriptions, it was always open to the respondent No. 7 to question the same before the statutory authority under Section 48 of "the Act" but the respondent No. 7 even while having reservation on the membership of 151 person took a calculated risk to contest the election to the post of Chairman and having not succeeded in the election that he chose to question the contest by raising the membership issue. A copy of the miscellaneous case is present at Annexure-2 and the issue so raised to question the membership of these persons finds mention in paragraph-11 of the petition which are:

"(a) The application was not submitted in the office of the Society;

(b) The applications were not in Form-V;

(c) The share money/admission fee in respect of these 151 persons was deposited by one person namely Ravindra Kumar who was not the member of the society; and

(d) The application was not forwarded by the Block Development Officer."

6. Raising these grounds, that the matter was considered by the Additional Registrar who vide order passed on 11.2.2015/26.2.2015 present at Annexure-3 recorded his satisfaction as to the manner in which the membership had been granted to these persons by the Block Development Officer-cum-Election Officer. The Additional Registrar by the said order has specifically mentioned that the necessary formalities were duly followed by the Block Development Officer to grant membership. May be the order so passed by the prescribed authority did not suit the respondent No. 7 but then his remedy would lie before the superior forum in appeal or revision as may be but instead the respondent No. 7 chose to file a review application, a copy of which is placed at Annexure-4 and a plain reading of the grounds simply reflected that the issue raised in the main application were reiterated meaning thereby the respondent No. 7 in fact wanted a re-hearing on the issue which is clearly beyond the scope of a review application.

7. Although Mr. Jha has endeavoured to argue that fresh grounds were raised by the review petitioner which were not found in original application but what I find from the ground listed below paragraph-17 is that it is a reiteration of the issue raised in the main application. The order on review is impugned at Annexure-6 and the Additional Registrar on the same set of facts has taken a turn around to reverse his opinion and remand the matter to the Block Development Officer to consider the membership issue. The Block Development Officer who is the author on the membership issue also takes a turn around on his earlier view to hold that the prescribed procedure had not been followed in grant of membership. The Block Development Officer becomes even adventurous to comment on the election result. As I have observed hereinabove whether or not the prescribed procedure had been followed on the membership of the 151 person in question, no such issue was raised by the respondent No. 7 by filing an appropriate

application in this regard under section 48 of "the Act" prior to the election. The respondent No. 7 being the erstwhile Chairman of the Society forwarded the membership list, allowed the voter list to be prepared and even contested the election. Until the election result he did not bother to raise any issue on the grant of membership to these 151 persons. The wisdom has dawned upon the respondent No. 7 after the election result in which he was defeated. Whether the legal formalities in grant of membership to 151 persons stand satisfied or not cannot be commented but once these persons have been included in the membership of the society then thereafter it can only be a case of cancellation of membership and which again can only be on grounds of eligibility to hold membership of the Society and on no other grounds, viz failure to meet the procedural requirement. It is now too late in the day for respondent No. 7 the erstwhile Chairman of the society to go in the reverse direction for questioning the membership of these 151 persons and unless it goes to the root of the matter regarding their eligibility to gain membership, it is not to be lightly interfered with. The illegality is perpetuated by the Additional Registrar in exercising his review jurisdiction beyond the scope of review to rehear the matter and give a fresh opinion on the merits of the case itself. Another infirmity reflecting from the order is that it does not expressly provide whether the affected members were noticed at the original stage or the stage of review. Such illegality is further perpetuated by the Block Development Officer to question the election itself, on the membership issue.

8. For the reasons so recorded hereinabove, the order passed by the Additional Registrar on review impugned at Annexure-6 as well as the opinion recorded by the Block Development Officer impugned at Annexure-7 cannot be upheld and are accordingly set aside.

9. The writ petition is allowed.