

(1995) 01 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12149 of 1993

Shambhu Prasad Roy

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Citation : (1995) 01 PAT CK 0035

Hon'ble Judges : S.N. Jha, J;S.J. Mukhopadhyaya, J

Bench : Division Bench

Advocate : Y.V. Giri, Jyoti Sharan and M.N. Parbat, for the Appellant; D.N. Yadav, for State and Kamlapati Singh and Ishwari Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioner has challenged the order of the Joint Registrar, Cooperative Societies, Chapra setting aside his election as Chairman of the Vijaypur Vyapar Mandal Co-operative Society. We could have relegated the Petitioner to the appellate forum but having regard to the fact that the writ petition was entertained by a Bench of this Court and also having regard to the question involved, we heard parties on merits. The facts giving rise to this application are as follows.

2. The election of the members and office-bearers of Vijaypur Vyapar Mandal Co-operative Society Ltd. (In short "the Society") was held on November 22, 1986. One Nand Kishore Singh was elected as the Chairman. He died during currency of the term. The Petitioner was co-opted in his place as the Chairman on April 10, 1988. On expiry of the term of members and office bearers of the said Managing Committee, election was held on December, 15, 1989. The Petitioner was elected as the Chairman. The term of the new Managing Committee expired on March 31, 1992. Since fresh elections could not be held within the stipulated period the Managing Committee stood dissolved and an Administrator was appointed. The election was finally held on June 6, 1993. The Petitioner was again elected as the Chairman. His election, however, was challenged on the

ground that he had already been an office bearer of the Managing Committee for two consecutive terms and, therefore, in terms of Section 14(8) of the Bihar Co-operative Societies Act 1935 (in short, "the Act"), he was not eligible for election. The ground found favour with the Joint Registrar. By the impugned order dated November 23, 1993 the election was set aside.

3. The facts mentioned hereinabove are not in dispute. The only contention raised on behalf of the Petitioner is that he having been elected as an office-bearer (Chairman) of the Managing Committee only once, the bar of Section 14(8) of the Act was not applicable. According to the Petitioner the term of office within the meaning of Section 14(8) must mean full term and not par; thereof. The question for consideration is whether a person having served as an office-bearer of the Managing Committee for part of the stipulated term (of three co-operative years) can be said to have completed full term so as to attract the mischief of Section 14(8) of the Act.

4. Section 14(9) of the Act provides that notwithstanding anything contained in the rules or bye-laws, the term of the members and office-bearers of the Managing Committee of a registered society shall be three co-operative years. It also provides that if elections are not held within the said period of three co-operative years the members and office-bearers shall continue to hold office for a further period of nine months from the close of the co-operative year or till the elections are held, whichever is earlier. Section 2(bb) of the Act defines co-operative year to mean a year beginning with 1st of April and ending on 31st March of the year. First proviso to Section 14(10) lays down that irrespective of the date of a election, the term shall relate back and be deemed to commence from 1st of April of that year.

5. In view of the aforementioned provisions there is no dispute that the terms of the members and office-bearers of the Managing Committee of the society whose elections were held on November 22, 1986, commenced on April, 1986 and expired on March 31, 1989. The term of the members and office-bearers elected on December 15, 1989, likewise, commenced on April 1, 1989 and came to an end on March 31, 1992. They continued to hold their office by virtue of the provisions of Section 14(9) for a period of nine months thereafter i.e. upto December 31, 1992. As elections were not held by then the Managing Committee stood superseded with effect from January 1, 1993 u/s 14(10).

6. The answer to the question framed lies in the very language of Section 14(8) of the Act. The said provision reads as hereunder:

Notwithstanding anything contained in any provision of this Act, Rules made thereunder and the bye-laws of a registered society, no person shall be eligible for election or nomination as an office-bearer of the Managing Committee of a registered society if he has been an office-bearer of the Managing Committee for two consecutive terms:

Provided that such person may be eligible for election or nomination as an office-

bearer of the said Managing Committee at the interval of three co-operative years after having been the office-bearer of that Managing Committee for two consecutive terms.

It would appear that in order to attract the bar as to the eligibility what is to be seen is whether the person "has been an office-bearer" of the Managing Committee for two consecutive terms. The provision does not say that the term should be qua elected office-bearer or otherwise. If a person is elected, ordinarily, he will have a term of three Co-operative years. If, however, he is nominated or co-opted to the office, whether independently or in place of the ex-members/office-bearers, he cannot claim that his term shall commence from the date of nomination/co-option and that he will continue to hold the office for a period of three co-operative years thereafter. The term "office-bearer of a Managing Committee" has been defined u/s 2(gg) to mean and include the Chairman, the Vice-Chairman, the Secretary, the Joint Secretary, the Treasurer or any such functionary by whatever name he may be designated. The Managing Committee, it would appear, is a compendious expression which means and includes its office-bearers. The Managing Committee and its office-bearers cannot be understood as distinct entities. The term of members or the office-bearers, therefore, cannot be said to be different from that of the Managing Committee. Their term must be held as co-terminus.

7. Thus, simply because on the death of an elected office-bearer Anr. person is nominated or co-opted in his place, he cannot claim that he shall have a term of three co-operative years independent of the term of the Managing Committee. He cannot be permitted to say that although the term of the Managing Committee came to an end on expiry of three Co-operative years and the grace period of nine months, the person nominated or co-opted in place of deceased office-bearer during the currency of his term would continue to hold the office even thereafter. That apart, on plain reading of Section 14(8) it is abundantly clear that if he has served as an office-bearer for even part of the term he will be deemed to "have been" an office-bearer of the Managing Committee for full term.

8. For the reasons aforesaid, the Petitioner must be held to have been an office-bearer even prior to his election on December 15, 1989 and thus completed two consecutive terms as the Chairman. Accordingly, I have no hesitation in holding that he is covered by the provisions of Section 14(8) of the Act. He was not eligible for the election which took place on June 6, 1993. His election as Chairman has rightly been set aside.

9. In the result I do not find any merit in the writ application which is, accordingly dismissed. No costs.

S. J. Mukhopadhyaya, J.

10. I agree.