

(2016) 02 PAT CK 0073

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 13830 and 14114 of 2015

Shamim Tabrej and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 2, Section 2(i), Section 25, Section 26, Section 40, Section 48, Section 48 (2) (a), Section 48(1), Section 48(2), Section 50, Section 56, Section 6, Section 6 (1), Section 6(1), Section 6(2), Section 6

Citation : (2016) 02 PAT CK 0073

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Y.V. Giri, Sr. Advocate, Ishwari Singh, Surendra Kumar Mishra and Manish Kumar Singh, Advocates, for the Appellant; Anshuman, SC-14, Kuber Pathak, AC to SC-14 and Rakesh Kumar Jha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—1. Since the two writ petitions raise common issue of law hence they have been heard analogous and are being disposed of with the consent of the parties at the stage of admission itself by this judgment.

2. The limited issue raised in each of the two writ petition is whether even if the Joint Registrar, Cooperative Societies of a Revenue Division alongwith others, is vested with the powers of the Registrar vide notification dated 26.12.2008 published in the Bihar Gazette Extraordinary on 31.12.2008, the conferment would also ipso facto vest such authorities with the powers of the Registrar, Cooperative Societies exclusively vested under Section 48(2) of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act").

3. I have heard Mr. Y.V. Giri, learned senior counsel appearing for the petitioners in the two writ petitions, Dr. Anshuman, learned Standing Counsel-14 in CWJC No. 13830 of 2015 and Mr. Gautam Bose, AAG-8 in the other writ petition. The election petitioner in each of the cases is represented by Mr. Rakesh Kumar Jha.

4. While it is the argument of Mr. Giri, learned senior counsel for the petitioner in reference to the judgments of this Court reported in , 2015(4) PLJR 359 (Katra Prakhanda Matsyajivi Sahyog Samiti v. State) and , 1983 PLJR 196 (Abdul Gafoor v. State) that the issue stands settled in these judgments which hold that though the State Government is vested with powers to appoint any person under sub-section (2) of Section 6 of "the Act" to assist the Registrar, Cooperative Societies appointed under sub-section (1) thereof but the legislature has transferred no such powers in the State Government, to confer upon such persons, with the powers which exclusively stands reserved in the Registrar under Section 48 of the Act".

5. Learned counsel appearing for the State as well as Mr. Jha, also rely upon the provisions of Section 6(2) of "the Act" to submit that where the Legislature has conferred powers on the State Government to issue notification conferring power on any person appointed under sub-section (2) to assist the Registrar it would be an inclusive conferment and a notification conferring such power as well would include the powers vested in the Registrar, Cooperative Societies under Section 48(2) of "the Act". In support of the submission, learned counsel have relied upon the judgments of this Court reported in , AIR 1983 Patna page 137 (Raghav Jha v. Registrar, Co-op. Societies, Bihar) and , 1992(1) PLJR (SC) 7 (Yogendra Prasad v. Additional Registrar).

6. Considering the nature of contest and arguments advanced, I do not deem it necessary to go into the intricate details of the contest for the contest is limited to the interpretation of Section-6 of "the Act" and the extent of delegation flowing therefrom. Mr. Jha, learned counsel for the respondents has also referred to the provisions of Section 14A(6) of "the Act" to submit that this provision got incorporated in "the Act" by amendment introduced in 2008 and confirms this legal position since the moment it provides that an election petition can be filed before the Registrar or such other officer appointed to assist the Registrar under Section 6 of this Act it would impliedly vest jurisdiction in such person appointed to assist the Registrar to not only accept filing and hear the matter but also exercise jurisdiction under Section 48(2) of "the Act".

7. The contest being primarily limited on the interpretation of Section 2(i), Section-6, Section-14A(6) and Section 48 of "the Act", I shall not be required to delve into the merits of the case, for the stage is not appropriate since the matter is yet pending before the prescribed authority under "the Act". Apparently the arguments advanced by learned counsel for the parties being limited to the exercise of jurisdiction this Court without entering into the merits of the case would proceed to consider whether in view of the express provisions of "the Act", any authority other than the Registrar, Cooperative Societies though conferred with powers under Section 6(2) of "the Act", can suo motu take up the hearing of an election dispute or exercise powers vested in the Registrar under Section 48(2) of "the Act".

8. Before proceeding further, I would like to place on record that whereas in

CWJC No. 13830 of 2015, the petitioner has questioned the jurisdiction of the Joint Registrar, Cooperative Societies, Tirhut Division, Muzaffarpur to assume jurisdiction of the hearing of Election Dispute No. 14 of 2014, the other writ petition questions similar jurisdiction exercised by the same authority in Election Dispute No. 12 of 2014.

9. This Court would not have been required to go into an exhaustive discussion on the issue in view of the self eloquent statutory provisions and the opinion expressed by this Court in the case of Katra Prakhanda Matsyajivi Sahyog Samiti (supra) but since an argument has been advanced by Mr. Jha that this Court while expressing its opinion has not taken note of the opinion of the Division Bench rendered in the case of Raghav Jha (supra), hence the present exercise. It is thus now to be seen whether the opinion expressed by the Division Bench in the case of Raghav Jha makes any deviation in the opinion expressed by this Court in the case of Katra Prakhanda Matsyajivi Sahyog Samiti (supra).

10. Section 2(i) defines a Registrar and means a person appointed to perform the duties of a Registrar of Cooperative Societies. The definition of the Registrar present in Section 2(i) is rather specific and is not in general terms for it only means the Registrar of Cooperative Societies and none other. Now although Section 6(1) of "the Act" empowers the State Government to appoint a person to be the Registrar of Cooperative Societies for the State or any portion thereof, it also vests jurisdiction in the State to appoint such number of persons to assist the Registrar, Cooperative Societies, under Section 2 thereof. The provisions of Section 6(1) of "the Act" leaves nothing to speculate that there is only one Registrar of the Cooperative Societies and the rest are appointed merely to assist the Registrar. While sub-section (1) of Section 6 is the enabling provision, sub-section (2) of Section-6 provides the procedure and permits the State Government to confer all or any of the powers of the Registrar under "the Act" on any person appointed in sub-section (1) to assist the Registrar except the powers under Section 26, by a general or special order to be published in official gazette. Sub-section (3) of Section 6 further confers power on the State Government to appoint an Additional Registrar where it is of the opinion that the Registrar needs assistance of an Additional Registrar for speedy disposal of the business and sub-section (4) thereof vests the Registrar with powers of delegation, transfer or assignment of such of his powers, functions and duties to the Additional Registrar as he may consider necessary including the power under Section 26 and Section 50 of "the Act". Section-6 of "the Act" thus while recognizing the wholesome powers vested in the Registrar of Cooperative Societies appointed under sub-section (1), also enables the State Government to appoint as many persons to assist the Registrar.

11. Section 14A of "the Act" was incorporated vide Amendment Act 18 of 2008. While sub-section (1) thereof vests jurisdiction in the Bihar State Election Authority constituted under the Bihar State Election Authority Act, 2008 to conduct the election to the Managing Committee of the Cooperative Societies

registered under "the Act", sub-section (6) thereof inter alia provides that no election to the registered societies shall be called in question except by way of election petition to be filed within 90 days of declaration of result and is to be decided as a dispute under Section 48 of "the Act". The provision further while reserving the jurisdiction vested in the Registrar, Cooperative Societies, before whom the election petition is to be filed, also extends such power to other officers appointed to assist the Registrar. The provision is self eloquent and while providing for disposal of such election dispute in the manner prescribed under Section 48 and while recognizing the powers of the Registrar, Co-operative Societies before whom the election dispute is to be filed, it merely reserves option for the election petitioner to file his dispute before any other officer appointed to assist the Registrar under Section-6 of "the Act" and which election dispute is to be disposed of in the manner provided under Section 48 of "the Act".

12. This would bring the discussion to the all important Section-48 of "the Act" which inter alia provides that any dispute raised under "the Act" shall be referred to the Registrar meaning thereby a person appointed as such under Section 2(i) and 6(1) of "the Act". The exclusiveness of the jurisdiction of the Registrar, Cooperative Societies in the matter of reference of a dispute(s) including electoral dispute(s) is reflected from usage of the word "shall" in sub-section (1) and which confirms any dispute raised, shall be referred to the Registrar.

13. Sub-section (2) of Section 48 vests discretionary jurisdiction in the Registrar, Cooperative Societies and who may, on receipt of such reference, either adjudicate on the same himself or to transfer the dispute to any person vested with powers of a Registrar. Sub-section (3) of Section-48 further reserves jurisdiction in the Registrar to withdraw any such reference and adjudicate thereupon, himself.

14. Having discussed upon the statutory provisions it is to be seen whether the reliance of learned counsel for the respondents exclusively on the notification dated 26.12.2008 issued under Section 6(2) of "the Act" present at Annexure-A to the counter affidavit filed by the official as well as the private respondent, does make any shift to this legal position.

15. The notification dated 26.12.2008 is in tune with the statutory provisions of section 6(2) of "the Act" and while conferring powers on the authorities named in column-2 makes it abundantly clear that such conferment is only to assist the Registrar. The nature of delegation itself explains the limits to such conferment. The notification merely authorizes the officers named in Coloumn-2 to discharge the duties of the Registrar and the object and purpose of the conferment is to assist the Registrar. In the nature of conferment so made under the notification the argument of learned counsel for the State and Mr. Jha that in absence of any limitation to the conferment under Section 48 of "the Act" on the authorities named in Column 2, it would also include the powers vested under Section 48(2) of "the Act", is contrary to the delegation itself. Even if jurisdiction has been vested in these authorities, it is only to assist the Registrar and not independent

thereof meaning thereby it is only where the Registrar, Cooperative Society refers the matters to these authorities that they can either hear the matter themselves or assign the case to any other authority notified under Section 6(2) of "the Act" but certainly no suo motu powers can be exercised by these authorities notified under Section 6(2) of "the Act" to assume jurisdiction of the dispute.

16. Although much reliance was placed by Mr. Jha to the judgment of Raghav Jha (supra) but in my opinion the observations of the Division Bench in paragraph-15 has been misconstrued by him.

17. In fact the Division Bench even while discussing this issue has recognized the limited extent of jurisdiction conferred upon the authorities appointed under Section 6(2) of "the Act" to assist the Registrar which is manifest from the following observations present at paragraph-15 but has reserved its opinion on the issue at hand in absence of relevant facts:

"15. Now coming to the contention of Mr. Singh as to the jurisdiction of the Assistant Registrar to entertain the dispute and his making the award. I have already noticed that there is no dispute to the fact that the assistant Registrar has been conferred with the powers of the Registrar for the purposes of deciding the dispute under Section 48(1) of the Act. The dispute in the instant case, therefore, has been (sic) decided by the Assistant Registrar exercising the powers of the Registrar in this behalf. He must be evidently deemed to have received such a dispute for disposal on transfer. There can be various ways of transferring a dispute for disposal by a person empowered to act as the Registrar in this behalf. Such an order may be made on receipt of a particular reference. There can be at the same time a general conferment of power to entertain any dispute touching the business of a registered society by the State Government in exercise of the powers under Section 6(2) of the Act. The petitioner has not brought to our notice any of the relevant facts. An issue like this cannot be decided on presumptions and/or may-bes. This question was never canvassed at any lower forum and if the petitioner desired to raise this question as a question of jurisdiction and law for the first time in a writ proceeding it was for him to bring on record the relevant facts. In any view, the Assistant Registrar who passed the award contained in Annexure-1 was a person assisting the Registrar within the meaning of Section 6(1) of the Act; exercising powers of the Registrar within the meaning of Section 6(2)(a) of the Act. This contention of Mr. Singh also, therefore, must fail."

18. In my opinion the judgment in Raghav Jha (supra) is not an authority to the proposition in debate.

19. It would also be note worthy to mention here that the attention of the Division Bench in Raghav Jha (supra) was not invited to an earlier Division Bench judgment of this Court reported in 1983 PLJR 197 (Abdul Gafoor v. State of Bihar) which is specific on a matter arising from an election dispute. This very

issue came up for consideration before the Division Bench in the case of Abdul Gafoor (supra) and I am tempted to reproduce the observations of the Division Bench so recorded in paragraph-7 of the judgment:

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It is now well settled by several decisions of this Court that such a dispute shall also include within its ambit an election dispute. Therefore, if there arises any dispute with regard to validity of any election amongst the members of the society, it will fall within the ambit of Section 48 (2) (a) and such a dispute shall have to be referred to the Registrar. That is a mandatory provision of law.

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If a dispute with regard to the validity of any election, therefore, arises, it shall have to be referred to the Registrar. The Registrar may, on such a reference, decide the dispute himself or transfer the matter to any other person duly authorised in that behalf exercising the power of the Registrar under Sub-section (2) of Section 6.

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On a careful examination of the relevant provisions of Section 48, as aforementioned, it is manifest that once a dispute with regard to an election is raised, a reference has to be made to the Registrar- and that is a must-under Section 48(1)."

20. Mr. Jha has been very fair to bring to the notice of this Court a judgment of the Supreme Court rendered in the case of Yogendra Prasad v. Additional Registrar reported in 1992(1) PLJR (SC)7 which cements the legal position. The dispute was in relation to the business of the society and was on the issue of doctrine of election as to whether a proceeding would lie under section 40 of "the Act" in respect of a Surcharge Case or Section 48 proceeding would lie. In the process the Supreme Court has discussed the powers vested in the Registrar under Section 6(1) and those conferred with such power under Section 6(2) of "the Act". I am again tempted to reproduce the observations made by the Apex Court in paragraph-3, 4 and 5 of the judgment which confirms that the opinion expressed by this Court in the case of Katra Prakhanda (supra) does not require a reconsideration.

"3.....From a reading of sub-sections (1) to (3) of Section 6, it is clear that the State Government may appoint a person to be the Registrar of the Cooperative Societies besides Addition- al Registrar and also appoint persons to assist such Registrar. Under sub-section 2 (a) the persons appointed to assist the Registrar are entitled to exercise all or any of the powers of the Registrar under the Act except under Section 26. Sub-section (4) gives power to the Registrar to delegate, transfer or assign to the Addl. Registrar all the powers including the power under Sections 25 and 56 and thereupon the Addl. Registrar as a delegate of the Registrar is empowered to exercise powers so transferred or assigned or delegated to him. Section 6 thereby makes a clear distinction between the exercise of the powers of the Registrar, by the Addl. Registrars as a delegate of the Registrar and of the Asstt. Registrars or Dy. Registrars appointed to assist the Registrar empowered as such in the discharge of their functions under the Act. Such assistants are entitled by statutory operation to exercise the powers under the Act conferred by the State Govt. except to the extent expressly excluded by the statute.

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Such disputes shall be referred to the Registrar. Under sub-section (2) thereof the Registrar may on receipt of such reference (a) decides the dispute by himself or (b) transfer for disposal to "any person exercising the powers of the Registrar in this behalf.

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A bare reading of these relevant provisions clearly manifests the legislative intention that the Registrar on reference, himself may decide the dispute or transfer it for disposal to a person exercising powers of the Registrar in this behalf.

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The Registrar under Section 6 (1) of the Act has his preeminent supervisory authority over the functions and orders of the Registrars appointed under Section 6(2)(a) to assist him in the discharge of the duties or functions under the Act except over his delegate under sub-section (4) of Section 6.

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At the cost of repetition we point out that Section 6, Sub-section (1) and sub-section 2 (a) make a distinction between "the Registrar" and "a person exercising the powers of the Registrar". Sub-section (4) further amplifies the exercise of the power of the Registrar by the Additional Registrar as his delegate. That apart, it is clear that the Registrar is the final supervisory authority over the subordinate officers exercising the powers or performing the duties under the Act."

21. The Supreme Court has recognized the wholesome power vested in the Registrar, Cooperative Societies under Section 6(1) of "the Act" having a preeminent supervising authority over the functions and orders of the Registrar appointed under Section 6(2)(a) of "the Act" to assist him in discharge of duty except over his delegate under Section 6(4) of "the Act" i.e. the Additional Registrar.

22. The legal position is very clear and while Section 2(i) of "the Act" defines the Registrar as one singular individual i.e. the Registrar of the Cooperative Societies and Section 6(1) of "the Act" while confirming to this position, though enables the State Government to notify statutory authorities under "the Act" and vest them with powers of a Registrar under sub-section (2) thereof but the object and purpose is very clear and it is only to assist the Registrar and not to bring them at par with the Registrar. The supervisory control of the Registrar over the proceedings under "the Act" is recognized under Section 48(2), (3), (6), (8) and (9) of "the Act" and cannot be diluted by an executive notification even though having statutory character. The State Government vested with powers of delegation of limited character cannot override the statutory provisions nor can render the same otiose as being canvassed by learned counsel for the respondents.

23. The statutory provisions are absolutely clear and even if the Registrar, Cooperative Societies as defined under Section 2(i) of "the Act" and appointed as such under Section 6(1), has the assistance of other statutory authorities who are vested with similar power, the pre-eminent supervisory jurisdiction exercised by the Registrar over these authorities under Sections 6, 48(2), (3), (6), (8) & (9), would be rendered nugatory if the powers vested in such authorities appointed to assist the Registrar, is held at par with the Registrar, Cooperative Societies.

24. In my opinion, even the notification in question dated 26.12.2008 published in Gazette on 31.12.2008 does not reflect any such intent, such as being interpreted by learned counsel. The notification has been misread by the Joint Registrar to usurp the jurisdiction vested in the Registrar, Cooperative Societies for even while conferring powers under Section 48 of "the Act" on the Joint Registrar of a revenue division as well as on the other authorities named in Column 2 of the notification, the conferment is only to assist the Registrar,

Cooperative Societies and not to exercise independent jurisdiction meaning thereby it is only in case where the Registrar, Cooperative Societies on receipt of a reference transfers the matters to these authorities that the authorities named in Column 2 of the notification can either hear the dispute themselves or they can transfer it to any other authority vested with such powers but until such time that on a reference any such transfer is made by the Registrar, Cooperative Societies, neither these authorities can either exercise suo motu power to hear the matter themselves or to refer the matter to any other authority vested with the powers of the Registrar for any such exercise would be a usurpation of jurisdiction by these authorities and in excess of jurisdiction so conferred upon them either under the notification or within the statutory provision of Section 6(2) of "the Act".

25. Although paragraphs 21 and 22 of the judgment rendered by this Court in the case of Katra Prakhanda (supra) does answer the issue posed before this Court and but for the argument advanced by Mr. Jha and counsel for the State relying upon the Division Bench judgment of this Court in case of Raghav Jha (supra) which in my opinion makes no shift to the legal position explained, this Court would not have been required to go into such elaborate discussion on the issue especially when the legislature has kept everything luminescent, far from confusion and the jurisdiction of the statutory authorities crystal clear.

26. For the reasons so discussed hereinabove, I deem it fit and proper to hold that the proceedings pending before the Joint Registrar, Tirhut Division, Muzaffarpur in Election Dispute No. 14 of 2014 in CWJC No. 13830 of 2015 and Election Dispute No. 12 of 2014 in the second writ petition and the jurisdiction exercised by the Joint Registrar is de hors the delegation and the entire proceedings arising from Election Dispute No. 14 of 2014 and Election Dispute No. 12 of 2014 stands transferred to the Registrar, Cooperative Societies for appropriate orders and for its disposal in accordance with law.

27. The two writ petitions are allowed accordingly.