
(2019) 04 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (C) No. 718 Of 2017

Shankar Prasad Yadav And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Jharkhand Co-operative Society Act, 1935 — Section 2, 21B, 21C, 21D, 21J, 21K, 21L, 21M, 21N, 21O, 21R, 48
Co-operative Societies Rules, 1959 — Rule 15, 20, 20(2)(a), 20(2)(b), 20(2)(c), 20(2)(d), 20(2)(e), 21A, 21B, 21J
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 04 JH CK 0004

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Mohan Kumar dubey, Abhishek Sinha, Abhijeet Kumar

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India, wherein the order dated 27.01.2015, passed in Election Dispute Case No. 14 of 2014 has been assailed, whereby and whereunder, the Registrar of the Co-operative Society in exercise of the power conferred under Section 48 of the Jharkhand Co-operative Society, Act, 1935 (hereinafter to be referred to as the 'Act', 1935) has declined to declare the election in question, as null and void.

2. It is the case of the petitioners that being the members of the PACS, Deoghar, for which the election was decided to be conducted on 23.09.2014 and for that voter list was published, but in the said voter list, other relatives have also been included as the member of the PACS and thereafter, they have obtained the voter's right and participated in the election which was concluded and successful candidate has been declared.

3. According to the petitioners, under the provision of the Act, 1935, in a family, only one member, who is Mukhiya of each family of the village, can be a member

of the PACS having the voting right, but, herein, in the instant case of a family other member have also been included as voters and, therefore, the election since is based on the wrong voter's list, may be held to be null and void.

After conclusion of election and publication of result an election dispute has been raised by the petitioners before the Registrar, Cooperative Societies, invoking the jurisdiction, as conferred under Section 48 of the Jharkhand Co-operative Society, Act, 1935. The said authority after discussing the reason, therein, has declined to interfere with the said election, against which the present writ petition has been filed invoking the jurisdiction conferred upon this Court for issuance of writ of certiorari, as conferred under Article 226 of the Constitution of India.

4. Mr. Abhishek Sinha, learned S.C. VI appearing for the Respondent-State on the strength of the counter affidavit filed on behalf of the Respondent No. 6 being authorized by other respondents, has submitted that election has already been concluded and the tenure of the Managing Committee, which had assumed the office on the basis of the results declared on 23.09.2014 had also concluded on 31.03.2017 and the next election of the society is due, therefore, nothing survives to be adjudicated in the present writ petition, since the fresh election which is due to be conducted has lost its tenure by lapse of the tenure as per the stipulated period provided under the bye-laws of the Society.

5. Having heard the learned counsel for the parties and on appreciation of the rival submissions, it is evident that the dispute pertain to the election of the PACS, Deoghar.

The petitioners have agitated the dispute on the basis of the voting rights, as has been exercised by one or the other members, even though, they are the members of one family, which is not permissible under the bye-laws, before the competent authority by invoking the jurisdiction of Section 48 of the Act, 1935, who has declined to interfere with the election for the reason that the duly appointed election officer in pursuance to the provision under Section 21 (J) of the Act, 1935 has published the voter's list inviting objection from one of the members, but, no such objection under the said provision has been made, therefore, the petitioners ceases their right to question the membership that too, when the petitioners are also having the father and son and sailing in the same boat, they cannot question the process of election, when they have lost in the election.

6. This Court after going across the impugned order and the pleadings made in the writ petition, as also the counter affidavit filed by the Respondent-State, thinks it proper to first deal with the provision of Section 15 of the Co-operative Societies Rules, 1959, which speaks about the bye-laws of the Society, basing upon which the election is to be conducted.

Rule 20 speaks about the general meeting of the Registered Society.

Rule 21-A speaks about the election, which stipulates that notwithstanding anything contained in any Rule and Bye-laws of any co-operative Society, the election of the members of the Managing Committee, office bearers thereof and the delegates of the Society shall be held in a Special General Meeting under Rule 21-B to 21-X, provided that the election of the members of the Managing Committee, officer-bearers and the delegates of a newly registered co-operative Society shall be held in the Preliminary General Meeting according to the provision of Rule 20 (2) (a) to (e).

Section 21-B stipulates about the provision of general superintendence, direction and control of the Registrar, Co-operative Society, the power to conduct election in a co-operative society or class or classes of co-operative society was based on the recommendation of a Committee consisting of the following officers:-

- (i) The Principal Secretary/Secretary to the Government, Co- operative Department, Jharkhand - Chairman
- (ii) The Principal Secretary/Secretary to the Government, Department of Personnel, Administrative Reforms & Rajbhasha, - Member
- (iii) Registrar, Co-operative Society, Jharkhand. - Member Secretary

Section 21-C stipulates about the mode of election, which is to be held in a special general meeting on such date, as may be fixed by the Registrar, Co-operative Society or the Conducting Officer concerned.

Section 21-D stipulates regarding appointment of an Election Officer, provided that no Government servant below the rank of a Co-operative Extension Officer shall be appointed as Election Officer or Alternate Election Officer by conveying the officer concerned.

Section 21-J speaks about the power of the election officer, which reads hereunder :-

"21-J (1) The Election Officer shall-

- (i) cause the voter list to be displayed on the notice board at the head quarter of the society and all its branches and at such other place or places as may be deemed fit.
- (ii) publish or cause to be published on the notice board of the head quarter of the society and all its branches fixing the date for filing objections to the voter list and the disposal of the objections by him:

Provided that there shall be a difference of at least seven days between the date of publication of the voter list as well as the general notice and the date of filing of the objection.

- (iii) After disposal of objections published or caused to be published, the final voter-list shall be displayed at such places as specified under Clause (i)

(iv) Forward a copy of final voters-list to the society concerned.

(2) The society shall keep a copy of the final voter-list at the office of the society during office hours for perusal and the copy of voters-list shall be made available on payment of the price fixed by the society."

It is evident from the provision as stipulated under Section 21-K, L, M, N and O, which contains the provision of process of election.

Section 21-R, confers power upon the Election Officer, who will make arrangement, as he may deem necessary to ensure identification of the voter and to prevent impersonation.

It is evident from the aforesaid provision that Rule 21-J confers power upon the Election Officer to publish the names of the members in the shape of the voter's list. The said provision contains provision of inviting objections from one or the other members before taking the said voter list a final shape.

7. There was no substance in the petitioner's contention that the voter's list suffers from error, since of a family, the other relatives have also been included as the members of the PACS for the reason that the petitioner in order to strengthen his arguments, has drawn the attention of this Court towards page 26 (Annexure-5 Series) which according to the petitioner is an objection in the light of the provision, as contained in Rule 21-J and therefore, his grievance is that in spite of the objection having been made before the competent authority, the same has not been decided, rather, the election authorities have proceeded with the election and the result has been pronounced, therefore, the entire election may be declared null and void.

There is no dispute in the position of law that if a thing is to be done, it has to be done strictly in accordance with the provision of law.

Herein, in the instant case, the voter's list is to be published by the Election Officer before conducting the election, as per the provision made under Rule 21-J.

The said provision also stipulates to provide opportunity to the other members of raising objection towards the membership of the PACS.

However, the petitioners have made objection, but not before the Election Officer, rather Annexure-5, page 26 speaks that objection has been made before the Registrar, Co-operative Societies, therefore, the grievance raised by the petitioners that the objection filed under Section 2 having not been decided, the election conducted has no force for the reason that the petitioner has not invoked the jurisdiction of the competent authority, as conferred under Rule 21-J and therefore, the petitioners cannot raise dispute that their objection has not been decided, if the petitioners would have made the objection before the competent authority invoking the jurisdiction as conferred under Rule 21-J, the matter would have been different but, that is not the case of the petitioners herein.

8. This Court after going through the impugned order, has found regarding non-availing the opportunity of objection, as provided under Rule 21-J, since being not taken by the petitioners, therefore, the Registrar, Co-operative Societies has come to the conclusion that the petitioners in spite of the opportunity having been granted, since has not availed, therefore, it would not be proper on their part to raise this point that too when the petitioners being the father and one of the son is also member, therefore, the Registrar, Co-operative Societies, has stipulated therein, that the petitioners cannot question the membership of others, when he himself is sailing in the same boat.

Be that, as it may, the question, herein, is that when the petitioners was having opportunity to make an objection, since has not been availed rather participated in the election and after losing the same, they have raised the dispute, therefore, the Registrar, Cooperative Societies has not found it proper to consider the submission and the grounds taken by the petitioner warranting any interference in the said election.

9. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of writ of certiorari. However, there is no dispute about the legal position that writ of certiorari can be issued, when there is apparent error in the impugned order, on the face of the record and if there is any jurisdictional error, but, as has been stipulated by the Hon'ble Supreme Court that the scope of interference of the High Court to issue writ of certiorari sitting under Article 226 of the Constitution of India is very limited, as has been discussed in the case of Syed Yakoob Vrs. Radhakrishnan reported in A.I.R. 1964 477, wherein at paragraph no.7 their Lordships have held as follows:-

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had

erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); *Nagendra Nath v. Commr. Of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168).

In another judgment of Hon'ble Apex Court in the Case of *Sawarn Singh Vrs. State of Punjab* reported in (1976) 2 SCC 868 their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in *Syed Yakoob's case* (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

In another judgment rendered by Hon'ble Apex Court in the case of *Pepsico India Holding (P) Ltd. Vrs. Krishna Kant Pandey* reported in (2015) 4 SCC 270 their Lordships while discussing the scope of Article 226 and 227 of the Constitution of India in the matter of interference with the finding of the tribunal has been please to hold by placing reliance upon the judgment rendered in the case of *Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram* reported in (1986) 4 SCC

447 at para 17 has held as under:-

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in *Bathutmal Raichand Oswal V. Laxmibai R. Tarta* where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J, as the learned Chief Justice then was, observed at page 1301 of the report as follows:

..... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways v. Sukumar Mukherjee* to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in *Nagendra Nath Bose V. Commr. Of Hills Division* and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extent to quashing an impugned order on the ground of mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority."

10. As per the aforesaid principles laid down by the Hon'ble Apex Court, this Court is of the considered view that the petitioners have failed to make out a case for issuance of writ of certiorari under Article 226 of the Constitution of India, for the reason, as stated hereinabove and therefore, is not inclined to interfere in the impugned order.

11. Hence, the writ petition lacks merit and is, accordingly, dismissed.