
(2007) 11 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 8932 of 2007

Sunil Prakash

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Bihar Self Supporting Co-operative Societies Act, 1996 — Section 5

Citation : (2008) 1 PLJR 545

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ram Chandra Sahni, Ravindra Nath Dubey, for the Appellant; Binod Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The petitioner's Co-operative Society applied for registration in terms of Section 5 of the Bihar Self-Supporting Cooperative Societies Act, 1996. His application having been scrutinized, officiating Assistant Registrar, Self-Supporting Co-operative Society, Pupari Sub-Division, District-Samastipur granted the registration. This appears to have brought to the notice of Registrar Cooperative, Bihar. He got an enquiry conducted. He received report and thereafter by the impugned order, as communicated to the petitioner under memo No. 2466, dated 15.5.2007 (Annexure 6), the registration is declared void ab initio. It is not in dispute that all this was done by the Registrar behind the back of the petitioner without notice to the petitioner. The effect is that the very existence of the petitioner's Co-operative has become non est. The registration was granted on 26.2.2003 and it is after four years it is being declared void ab initio ex parte. State seeks to justify the action.

2. The I.A. being I.A. No. 5895/07 has been filed by one Smt. Siya Devi supporting the action of the Registrar and opposing the writ petition. Intervention has been sought on the ground that it is by virtue of her application that action was taken and it is by virtue of registration of the petitioner's co-

operative society that the intervener is being denied registration. It is thus submitted that she is a necessary party to the writ petition.

3. Before proceeding further I propose to dispose of the interlocutory application aforesaid. In my view, the application is not maintainable and is fit to be dismissed as such. Whether a person should be granted registration or not does not concern any other person. The registration is a matter between the registering authority and the person applied. The consequences may be that another person is deprived of certain benefits but those are consequential and remote effect and not direct and immediate.

4. Coming to the validity of the order impugned of the registration the same cannot be sustained from more than one reason. Firstly, it is now well settled by series of judgments including the judgment of Apex Court in the case of S.L. Kapoor vs. Jagmohan since reported in 1981 S.C. 136 that if an order has to have any civil consequences the same cannot be passed without issuing proper notice to the person likely to be affected and without granting him opportunity of hearing. In the present case, the petitioner was enjoying registration and that too for four years. The said right is to be snatched away and that too without notice or hearing him. This registration or withdrawal thereof entail serious civil consequences. Therefore, it was incumbent upon the Registrar to first issue notice to the petitioner and then take any action in this regard. It is also well settled that an order passed in gross violation of principle of natural justice is itself the order void ab initio and I hold that the order of the Registrar, Co-operative, Bihar, as impugned, is invalid in law and is void ab initio. The order is invalid even otherwise.

5. Learned counsel for the State submits that the Assistant Registrar, who signed the registration and/or granted the registration was not competent to do so. He was appointed as Co-operative Extension Officer, who was asked to officiate and perform daily function of the Assistant Registrar, as per notification issued in this regard in respect of certain matters alone and Section 5 power was not available to him. On the other hand, learned counsel for the petitioner has placed reliance on a notification issued in terms of Section 5 of the Act whereby Assistant Registrar was granted power in terms of Section 5 of the Act as well. Section 5 of the Act deals with registration of self-supporting co-operative society. These rival contentions and effect thereof have now to be decided.

6. Learned counsel for the State, in my view, is correct. He submits that the Co-operative Extension Officer, ought not to have exercised the power of a Registrar. Learned counsel for the petitioner is not correct in saying that the person who granted registration was the Assistant Registrar. He was, in fact, the Co-operative Extension Officer vesting for certain routine works as Assistant Registrar. He was granted only certain powers of the Assistant Registrar but not the power to register. He was thus not a full-fledged Assistant Registrar and if that be so he did not have the power to register in terms of Section 5 of the Act. The registration, so granted, would thus be wrongly granted or granted by a person

who is later found not to have the authority to grant such a registration. On this finding the next issue that arises is as to what is the effect of such a registration so far as petitioner is concerned, for the petitioner has committed no wrong. In law he was required to make an application to the office of the Assistant Registrar. He made such an application. The registration was granted by an authority purporting to act as an Assistant Registrar. Petitioner had nothing to do with the authority in question. The authority is later found to be lacking the competent to grant the registration. In such circumstances whether the registration, as granted, would be void or invalid. My answer to this is in the negative. The registration though granted by a person incompetent will be valid for legal and practical purposes on the principle and doctrine of *de facto* and *de jure*. In the case of *Gokaraju Ranhgaraju vs. State of Andhara Pradesh* since reported in 1981 SC 1473 has clearly held that the acts performed bona fide by authority, who is later found to lack the competent cannot be questioned. In that case a person was convicted in a Sessions Trial by a Sessions Judge. The person convicted filed an appeal. In the appeal he urged that the Sessions Judge was incompetently appointed and had no jurisdiction to be appointed as such. While the appeal was pending in a separate proceeding the High Court held that the Sessions Judge was incompetently appointed. His appointment was set aside. In that criminal appeal it was then urged that such officer manning the office was held to be incompetent all acts performed by him including the judgment delivered was void ab initio. This contention was rejected both by the High Court and the Supreme Court on basis of the doctrine as indicated above.

7. In that view of the matter the impugned order cannot be sustained. The registration, as granted, from the office of the Assistant Registrar cannot thus be faulted or set aside. The registration is valid so far as the petitioner is concerned and it cannot be invalidated because of some defects in the office of the officer granting the same.

8. The impugned order of the Registrar, Co-operative, Bihar, is thus set aside and the writ petition is allowed. However, it will be open to the Registrar, Co-operative, Bihar to take such action against the officer concerned, as he may be advised.