
(1995) 02 OHC CK 0007

In the Orissa High Court

Case No : Criminal Jurisdiction Case No. 5894 of 1994

Tara Prasad Pattnayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Citation : (1995) 1 OLR 358

Hon'ble Judges : S. Chatterji, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Pitambar Acharya, for the Appellant; Additional Government Advocate, K.C. Lanka and Govind Das, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The petitioner challenges the order of the State Government dated 19th of August, 1994, passed in purported exercise of power u/s 123 of the Orissa Co-operative Societies Act (hereinafter referred to as the "Act"), inter alia, on the ground that the said order has the effect of overriding the provision of Section 28(1- c) of the Act and as such the executive authority cannot have power to override a statutory provision. The order is also challenged on the ground of mala fides.

2. The petitioner's case in nutshell is that the Bhubaneswar Town Development House Building Co-operative Society which is the primary society was registered on 18-8-1983 with opp. party No. 3 as the President of the Preliminary Committee. In terms of Section 28(I-c) of the Act, the life of the Preliminary Committee expired on 17.8.1994." The Secretary of the Committee who is the Chief Executive Requested the Assistant Registrar of Co-operative Societies by letter dated 18.8.1994 to extend the term of the Preliminary Committee for one year and the Assistant Registrar in his turn submitted the proposal to the Registrar, Co-operative Societies, on the ground that the Society had not taken steps for formation of constituencies and conduct of election to the Board of Management of the Primary Society. The aforesaid recommendation has been

annexed as Annexure-2 to the writ application. The Registrar by his order dated 19.8.1994 recommended to the State Government for extension of the term of the Preliminary Committee of the Primary Society. The State Government there upon passed the impugned order on 19.8.1994, which has been annexed as Annexure-1 to the writ application. The aforesaid order was challenged in this writ application on 5-9-1994. On 8.9.1994 this Court passed an interim order and stayed the operation of Annexure-1 so far as it extends the life of the Preliminary Committee of the Bhubaneswar Town Development House Building Co-operative Society beyond one year of the assumption of the charge and opp. party No. 3 was enjoined from functioning and exercising power. But the said opp. party No. 3 had been elected as President of the apex body, namely, the Orissa Co-operative Housing Corporation Limited. The petitioner in the context assails his continuance as such President of the apex body on the ground that having ceased to become the President of the Primary Society, opp. party No. 3 is not entitled to continue as the President of the apex body. During the pendency of the writ application, an election to the primary body has been held and said opp. party No. 3 has been elected as the President of the primary body on 31.10.1994.

3. Mr. Acharya appearing for the petitioner contends that in view of the scheme of the Co-operative Societies Act and the provision of Section 28(1 -c) thereof, opp. party No. 3 having ceased to be the President of the Preliminary Committee of the primary society with effect from 17-8-1994 was not entitled to continue as the President of the apex body and, therefore, notwithstanding the fresh election of said opp. party No. 3 as the President of Primary body on 31-10-1994, he would have to seek re-election to the post of President of the apex body.

4. Opp. party No. 1 has filed a counter affidavit denying the allegations of malice so far as exercise of power u/s 123 of the Act is concerned. It has been stated in the said counter affidavit that the general body of the Town Development House Building Co-operative Society unanimously resolved to have opp. party No. 3 as President of the Preliminary Committee. According to the counter affidavit, there is no express provision in the Act that on expiry of the term of a Preliminary Committee of a society, the management shall vest in the Registrar if a successor-committee has not been constituted. It is averred that co-operative societies being democratic organisations and in view of the unanimous resolution of such society, the State Government has allowed opp. party No. 3 to continue for sometime in exercise of power u/s 123 of the Act so that election to the body can be held. It is alleged that neither there is any malice therein nor any arbitrariness.

5. Opp. party No. 3 has also filed a counter affidavit indicating therein that the Preliminary Committee of the Bhubaneswar Town Development House Building Co-operative Society was registered on 18.8.1993 and in terms of Rule 32(a) and (c) of the Orissa Co-operative Societies Rules (hereinafter referred to as the "Rules") the Committee was constituted on 22-8-1993. The life of the Preliminary Committee was to expire on 21-8-1994 and the Secretary of the Committee

intimated the Assistant Registrar for re-constitution of the elected Committee of Management to manage the affairs of the society. The election to the Chairmanship of the apex society was held on 8.8.1994 and opp. party No. 3 having contested was declared elected on 16-8-1994 on which date the Preliminary Committee was existing. It is further stated that the Assistant Registrar having found certain difficulties in holding the election to the Preliminary Committee requested the State Government for extending the life of the Preliminary Committee till a new elected committee is constituted and the State Government ultimately passed the order on 19.8.1994 extending the life of the Preliminary Committee by three months. It is further averred that the provisional electoral role of the primary society was duly published on 8-9-1994 and the election programme was issued by the election officer on 25-9-1994 and opp. party No. 3 was declared uncontested as the President of the Primary Society on 11.10.1994. It is thus contended that there is no illegality in opp. party No. 3 continuing as the President of the apex body to which he had been duly elected.

6. In course of hearing of the writ application, Mr. Acharya, the learned counsel appearing for the petitioner, does not dispute the factual assertion that opp. party No. 3 during the pendency of the writ application has been elected as the President of the Primary Society. But his main thrust of the argument is that since the life of the Primary Society expired on 17. 8.1994 in terms of Section 23(l-c) of the Act. it was not permissible for opp. party Mo. 3 to continue as the President of the apex body and such continuance is bad in law. In order to appreciate this contention, it would be necessary to examine certain provisions of the Act and the Rules framed thereunder.

7. u/s 2(c) of the Act, an apex society can consist of only societies as its members and declared as such by the Registrar. u/s 21(1) proviso, where the member of a society is another society through its President, then if such society does not have a President, it shall have no right to vote or contest in any election. It is because of the aforesaid provision, Mr. Acharya argues with vehemence that from 17 8-1994, the life of the primary society having come to an end of which opp party No. 3 was the President and the said society was a member of the apex body, the said President having no right to vote cannot continue as the President of the apex body even though he had been duly elected to the post. u/s 28 (1-c) a Preliminary Committee consisting of the President and members indicated in the application for registration of society have a right to manage the affairs of the society for a period not exceeding one year or till a Committee is constituted in accordance with the provisions of the Act, the Rules or the Bye-laws whichever is earlier. Mr. Acharya, therefore, contends that the Preliminary Committee of the Primary Society of which opp. party No 3 was the President having been constituted on 1.8.1993 are not entitled to continue beyond the period of one year in terms of Section 28 (1-c) and, therefore, the impugned order by the State Government u/s 123 of the Act must be held to be without jurisdiction. Section 123 is the power of the State

Government, by general or special order to exempt any society or class of societies from any of provisions of the Act or direct that such provisions shall apply to such society or class of societies with such modification as may be. specified in the order. The provision of Section 123 is extracted harein below in extenso:

"123 Power to exempt Class of societies-

The State Government may by general or special order exempt any society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to society or class of societies with such modifications as may be specified in the Order."

For better appreciation of the point in issue, it would be appropriate for us to extract the provision of Section 28(1-c) also:

"28. Society to have a Committee:

(1) xx xx

(1-c) Notwithstanding anything contained in this Act, in the case of Society registered after the commencement of the Orissa Co-operative Societies (Amendment) Act, 1991, a Preliminary Committee consisting of the President and members indicated in the application for registration of the Society shall manage the affairs of the Society, for a period not exceeding one year or till a Committee is constituted in accordance with the provisions of this Act, Rules and the Bye-laws, whichever is earlier:

Provided that if such Society is an Apex or Central Society including a Central Co-operative Bank, and is assisted by the State or Central Government in any manner specified in Sub-Section (1) of Section 31 the State Government or any person authorised by it may nominate the members and President of the Preliminary Committee to manage the affairs of the Society for a period not exceeding two years so, however, that not less than half of the members thereof shall be from among the members of the Society."

8. Mr. Gobind Das appearing for opp. party No. 3, on the other hand, contends that a society registered under the Co-operative Societies Act does not die. But the management of the Society which vests in a Committee constituted in accordance with the Act, Rules and Bye-laws as provided in Section 28 cannot be vested in case of a Preliminary Committee beyond period of one year from the date of the constitution or till a Committee is constituted in accordance with the provisions of the Act whichever is earlier. According to Mr. Das on the date opp. party No. 3 was elected as the President of the apex body, the Committee of Management of the preliminary body was legally in existence and, therefore, after expiry of one year though the Committee of the primary society cannot manage the affairs of the society, but the right of opp. party No. 3 to continue as the elected President of the apex body cannot be taken away. He further contends that the power of the State Government to issue a special order in

respect of a particular Preliminary Committee of the society to have an election of the society cannot be said to be arbitrary or contrary to the provision of Section 28(1-c) of the Act and as such, there is no illegality with the order dated 13-8-1994.

9. On examination of the relevant provisions of the Act and the Rules thereunder, though prima facie we agree with the submission of Mr. Acharya appearing for the petitioner that the life of a preliminary committee could not have been extended by taking recourse to the exercise of power u/s 123 of the Act, the same being repugnant to Section 28 (1-c) inasmuch as Section 28 (1-c) starts with a non obstante clause to the effect, "notwithstanding anything contained in this Act", but it is not necessary to examine this question in detail, since admittedly, in the meantime, there has been an election to the Committee of Management of the primary society and opp. party No. 3 has been elected to the said body. We are unable to persuade ourselves to agree with the submission of Mr. Acharya that notwithstanding the said election of opp. party No. 3 as the President of the primary body, he ceases to be the President of the apex body with effect from 19.8.1994 and a fresh election should be held. In our considered opinion, by virtue of opp. party No. 3's election as President of the primary body he is entitled to continue as the elected President of the apex body until the life of the said body expires in terms of the provisions of the Act. In the aforesaid premises, the writ application is devoid of any merit and the same is dismissed. There will be no order as to costs.

S. Chatterji, J.

10. I agree.