
(1997) 11 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14272 of 1997

Trailokyanath Sarangi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-11-1997

Acts Referred:

Citation : AIR 1998 Ori 78 : (1998) 85 CLT 70

Hon'ble Judges : Susanta Chatterji, J; R.K. Dash, J

Bench : Division Bench

Advocate : B. Pal and B. Das, Pitambar Acharya, for the Appellant; P.K. Ray, Additional Government Advocate and B.H. Mohanty, for the Respondent

Judgement

Susanta Chatterji, J.—This writ petition although highly contested, raises a small but interesting point to be answered. The writ petition is at the instance of one Trailokyanath Sarangi at present the Member-cum-Director of the Committee of the Management of the Urban Co-operative Bank Limited at Tinkonia Bagicha, Cuttack. The petitioner has precisely challenged the notice published in the daily Oriya Newspaper "Prajantra" on 4-10-1997 as to convening a General Body meeting of the Urban Co-operative Bank scheduled to be held on 14-10-1997, copy whereof is Annexure-3 to the writ application. There is a further prayer to direct to hold election to the Committee of Management of the Bank forthwith since the life of the present Committee of Management is going to expire on 26-11-1997.

2. The writ petition was moved, before the learned Vacation Judge on 13-10-97 and that day by order in Misc. Case No. 12359/97 arising out of the writ petition, interim direction was made that attendance by any person in the meeting to be held on 14-10-97 would not ipso facto give any additional qualification which he did not possess and any decision taken or any result as the outcome of that meeting would be subject to the result of the writ application.

3. Two sets of application for intervention were filed. While the matter came up

for hearing before this Bench on 28-10-97, this Court having heard the learned Counsel for the petitioner and the learned Counsel for the other parties observed inter alia that the election process had already started and the alleged meeting pursuant to the purported notice pursuant to Annexure-3 had already been held. As such the writ petition had become infructuous if the outcome of the meeting was not challenged. Leave was granted to take effective steps by the petitioner to amend the writ petition as would be advised according to law. However, an application was filed for amendment challenging the outcome of the meeting held on 14-10-97. On 11-11-97 by a reasoned and comprehensive order, we allowed amendment to the writ petition and as conceded and suggested by the learned Counsel for the respective parties the matter is being taken up for final disposal as no further affidavits were necessary to be filed and the points of law can be canvassed for effective consideration of the Court to answer the problem posed by the Bar.

4. Mr. Acharya for the petitioner has challenged the legality, validity and propriety of the notice Annexure-3. At the outset we made it clear that this Court would consider the scope of the impugned notice and, in particular, the right and/or jurisdiction of the authority convening the meeting as also whether the subject-matters to be considered in the said meeting were permitted under law. The learned Counsel for the parties also conceded before us that they would address the Court on the question of law for adjudication of the dispute in question.

5. Our attention is drawn in particular to the impugned notice to convene the meeting by the Chief Executive of the Bank as per the direction of the Additional Registrar (General), Cooperative Societies. The agenda of the said meeting were as follows :--

(1) To discuss about the sitting fee, daily allowance, etc. of the Members of the Committee of Management of the Bank; and

(2) To decide as to Constitution of a smaller representative General Body.

6. Mr. Acharya has developed his argument drawing attention of the Court to Section 28 of the Orissa Co-operative Societies Act, 1962. This section in Chapter IV of the Act relates to Management of Societies. It is envisaged therein that the management of a Society shall vest in a Committee constituted in accordance with this Act, Rules and Bye-laws, and the Committee so constituted shall exercise such powers and perform such duties as may be necessary or expedient for the purpose of carrying out its functions under the Act which includes several powers as indicated therein. This section also indicates as to maintenance of the register of members up-to-date and convening meetings and special meetings of the General Body in time. Our attention is also drawn to Section 29 regarding meeting of the General Body which indicates inter alia that the meeting of General Body of members of a Society shall be held at least once in a year; and unless so provided in the bye-law of a Society, a notice of the General Meeting

stating the date, place and hour of the meeting together with a statement of business to be transacted and it shall be served on the members by any one or more of the modes as indicated therein.

7. Section 29(2) more clearly lays down that the meeting may be convened for any of the following purposes :--

(a) approval of the programme of the activities of the Society prepared by the Commission for the ensuing year;

(b) election, if any, in the prescribed manner of the members of the Committee other than nominated members;

(b-1) reviewing the loans advanced to the members of the Committee or any of their near relatives having common economic interest and if necessary to direct action for recovery of such loan;

(c) consideration of the audit report and the annual report;

(d) disposal of the net profits; and

(e) consideration of any other matter which may be brought forward in accordance with the bye-laws,

8. Mr. Acharya has laid further emphasis on the fact that pursuant to such provisions, the Committee which is still alive had convened such General Body meeting vide Annexure-4 to the writ application. There was no necessity of holding further General Body meeting and he has challenged the authority of the Additional Registrar (General) of the Co-operative Societies to direct the Chief Executive Officer of the Bank to convene such a meeting and to include such agenda which is otherwise not permissible under law, vide Annexure-3 to the writ application.

9. He argued further that there is a limitation of time. Within the time span if any enquiry is envisaged, the Registrar has to exercise his right within such time and after expiry of the time it becomes non est in the eye of law. In totality he submits that looking at Annexures-2 and 4 in the light of the framing of the scheme of the sections and rules, it would be apparent that the Chief Executive Officer has to function under the overall supervision of the Committee and the act done and/or caused to have been done in the present case by the Chief Executive Officer under the direction of the Additional Registrar to convene a meeting as per Annexure-3 cannot be sustained in law.

10. Mr. B. Pal appearing for some interveners who have been allowed to join the writ petitioner has supported the submission of Mr. Acharya and has further submitted that looking at Sections 28, 29 as also 65 of the Act, the power exercised by the Additional Registrar to convene the General Body meeting cannot be sustained.

11. Mr. B.H. Mohanty, learned Senior Counsel appearing for opposite party No. 4,

has opposed the writ petition very seriously. According to him, an enquiry is permissible u/s 65 of the Act. In instant case, there were various anomalies regarding the fees and allowances received by the sitting members of the Committee of Management for which complaints were made and audit objection was also raised. In order to set at rest all controversies, the Additional Registrar who was in seisin over the matter while holding an enquiry was well justified under law to direct the Chief Executive Officer to convene the meeting vide Annexure-3 and on discussion the agenda was indicated therein. There was no bar and/or impediment, nor was there any irregularity or illegality for interference of the writ Court in this regard.

12. He has further argued that the writ petition is not maintainable against a co-operative society and the limited point for which the writ petition lies is not ex facie available to the writ petition so as to maintain the present writ petition and the entire exercise by the writ petitioner is misconceived.

13. Mr. Mohanty has also drawn attention of the Court to Annexure-B to the counter-affidavit of opposite party No. 4 which the Additional Registrar had communicated to the Secretary, Cuttack Urban Co-operative Bank in the matter of requisition to call a special General Body meeting in the circumstances as pointed out therein.

14. Mr. Das, learned Counsel appearing for some other intervenes, has adopted the arguments of Mr. B.H. Mohanty and has submitted that there was no irregularity or illegality in convening the meeting as per Annexure-3. The business transacted in the said meeting having not prejudiced the petitioner, the matter should not be delayed by creating unnecessary confusion.

15. Patiently we have heard the submissions of the learned Counsel for the parties in presence of Mr. P.K. Ray, learned Addl. Govt. Advocate for the State. Very diligently we have considered the points raised by the parties. Regard being had to the materials on record and the points of law involved, we find that Section 28 of the Act is very clear as to the functions of the management by the Committee. We also find that the power of the Executive Officer is to act under the overall supervision of the Committee. In view of Annexure-B to the counter-affidavit of opposite party No. 4, it appears that the Additional Registrar has been authorised u/s 65(1) of the Act by the Registrar of Co-operative Societies, Orissa to conduct enquiry as per his Order No. 9361 dated 23-4-97. He had been conducting enquiry into the affairs of the Bank in course of which it was felt necessary to hold a General Body meeting of the Bank for consideration and determination of the matters as per the agenda. Therefore, in exercise of the powers u/s 65(3)(c)(i) of the Orissa Co-operative Societies Act, he directed the Secretary of the Bank to call a meeting of the General Body of the Bank on 14-10-1997 at 3 p.m. near the Head Office of the Bank for the purpose.

16. Let us now scrutinise in accordance with law whether such direction by the Additional Registrar was permissible under law and whether the convening of the

meeting by the Chief Executive Officer was maintainable in law.

17. Looking at Section 65 of the Act, we find the answer. It is clear in the said section that the Registrar may, at any time, of his own motion, by himself or by a person authorised by him by order in writing, hold an enquiry into the Constitution, working and financial condition of a society. Section 65(3)(c)(i) and (ii) provides :

"(1) he may, notwithstanding any rule or bye-law specifying the period of notice for a General Meeting of the Society require the officers of the society to call a General Meeting at such time and place at the Head Quarters of the society or any branch thereof and to determine such matters as may be directed by him, and where the officers of the society refuse or fail to call such a meeting he shall have powers to call it himself;

Provided that no such meeting shall be called without giving notice of at least five days prior to the date of the meeting"

(ii) a meeting called under Sub-clause (i) shall for all purposes be deemed to be a General Meeting called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws except that no quorum shall be necessary for such meeting."

18. In order to appreciate the scope and power u/s 65(3)(c)(i) and (ii) as aforesaid, we are to look to Section 65(3) itself. This section postulates that the Registrar, or the person authorised by him under Sub-section (1) shall, for the purposes of an inquiry under Sub-section (1) or Sub-section (2) have the powers as enumerated therein. Section 65(3)(c)(i) comes u/s 65(3) and power under this section can be exercised only if a case is made out under Sub-section (1) or Sub-section (2) of Section 65. What Sub-section (1) indicates is that there will be an enquiry into the constitution, working and financial condition of a society. Sub-section (2) says that an enquiry of the nature referred to in Sub-section (1) shall be held on the application of-

(a) a society to which the society concerned is affiliated;

(b) a majority of the members of the Committee of the society; or

(c) not less than one-third of the total number of members of the society.

19. We find the clear answer that Section 65(3)(c)(i) does not envisage unbridled power. It has its own limitation. It has to view through its windows, i.e. Sub-sections (1) and (2). Unless there is any necessity for the purpose of enquiry, no General Body meeting is to be held. To consider the functioning of the society, we are afraid, it is not the function of the Registrar to direct the Executive Officer of the Bank to call such meeting to consider the matters as per the agenda enclosed to Annexure-B to the counter-affidavit of opposite party No. 4.

20. The functions of the society are independent. If the society commits anything

wrong, an enquiry has to be held as permitted u/s 65 and the consequences will follow as the law permits. But in course of an enquiry the Registrar, and in the instant case the Additional Registrar being authorised by the Registrar, cannot usurp such power and ask to call a General Body meeting to discuss any subject and to take steps to ameliorate the wrong noticed in course of the enquiry. The statute has not conferred such power and we find sufficient force in the submission of Mr. Acharya for the petitioner that the jurisdiction exercised by the Additional Registrar by asking the Chief Executive Officer to convene the meeting in question was not sustainable in law and the Additional Registrar had exceeded its jurisdiction. He is certainly authorised as contemplated under Sub-sections (1) and (2) of Section 65 to hold an enquiry as envisaged u/s 65(3)(c)(i), but the agenda for discussion in the meeting was something different from such purpose and under such circumstances convening of the meeting and the notice therefore were bad. Obviously therefore, the outcome of such meeting suffers from inherent defect. While the writ petition was moved before holding of the meeting as alleged, interim order was passed by this Court that attendance of any person in that meeting would not ipso facto give any additional qualification which he did not possess and any decision taken or any results as the outcome of that meeting would be subject to the result of the writ application. Besides, the Court also granted leave to amend the writ application and on such amendment, the outcome of the alleged meeting was also challenged. We do not consider in this regard whether the enquiry has lost its force by efflux of time and we refrain ourselves from making any observation on this point. We make it clear that we have not considered whether anybody has acquired any qualification or disqualification. The election will continue in accordance with law and there is no bar and/or impediment for disposal of the writ petition. We make it clear that convening of the meeting as per Annexure-3 to the writ application was bad in law and any resolution taken thereby cannot have any force in law. With such observation we dispose of the writ application. No costs.

R.K. Dash, J.

21. I agree.