
(1989) 02 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1268 of 1989

Vidya Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Bihar and Orissa Co-operative Societies (Amendment) Act, 1988 — Section 41(9)
Bihar and Orissa Co-operative Societies Act, 1935 — Section 14(5), 6

Citation : AIR 1990 Patna 6 : (1989) 37 BLJR 536 : (1989) PLJR 377

Hon'ble Judges : N.P. Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : A. Bose, S.P. Gupta, Kaushal Kumar and N.N. Mukherjee, for the Appellant; R.B. Mahto, General, P.K. Shashi, Jr. Counsel to Advocate Gen., for the Respondent

Final Decision : Allowed

Judgement

1. This writ application has been filed on behalf of the petitioner, who is the representative of Kurji Primary Agriculture Credit Society Limited to the Patliputra Central Co-operative Bank Limited, for quashing an order dated 11-1-1989 issued by the Registrar, Co-operative Societies, Bihar directing the Administrators of all the Central Co-operative Banks of Bihar to prepare the list of the representatives who shall be entitled to participate in the preliminary general meeting and to hold the elections of the office bearers of the Managing Committees of the different Co-operative Banks in accordance with the programme mentioned therein. By that very order he has also appointed the Returning Officers for holding elections aforesaid.

2. According to the petitioner, the Registrar even after the amendment of the provisions of the Bihar Co-operative Societies Act (hereinafter referred to as "the Act") by the Bihar Co-operative Societies (Amendment) Ordinance, 1988, which came in force on 24th October, 1988, had no such authority to prepare an election programme for election of the members of the Managing Committee of

the different Co-operative Banks. Several amendments have been introduced by the aforesaid Ordinance which have far-reaching effect so far the election of the members of the Managing Committee, election/nomination of the Directors of the Co-operative Societies are concerned. However, while challenging the validity of the order of the Registrar aforesaid, reliance on behalf of the petitioner was placed on Sub-sections (5) and (6) of Section 14 of the Act which have been introduced by the aforesaid amending Ordinance. Sub-sections (5) and (6) of Section 14 are as follows :--

"(5) Notwithstanding anything contained in any provisions of this Act, rules made thereunder and the bye-laws of the society, the existing Managing Committee of a registered society in respect of which the State Government has power to nominate Chairman and other members of the Managing Committee in accordance with proviso (i), (ii) and (iii) of Sub-section (4) shall cease to exist from the date of promulgation of this Ordinance and its management shall vest in the State Government shall appoint an Administrator for the management of the affairs of such registered society till elections are held in accordance with the provisions of this Act.

(6)(a) The Administrator so appointed under Sub-section (5) shall hold the elections within six months of his appointment;

(b) The State Government shall nominate the members of the Management Committee including the Chairman under proviso (i), (ii) and (iii) of Sub-section (4) within the said period."

3. It was submitted that in view of Subsection (5) notwithstanding anything in the provisions of the Act, rules or bye-laws of any society the existing Managing Committee of a registered society, in respect of which the State Government has power to nominate Chairman and other members of the Managing Committee in accordance with proviso (i), (ii) and (iii) of Sub-section (4) shall cease to exist from the date of promulgation of that Ordinance. The State Government has to appoint an Administrator for the management of the affairs of such registered society till elections are held in accordance with the provisions of the Act. Sub-section (6)(a) enjoins the Administrator NO appointed under Sub-section (5) to hold the election within six months of his appointment. It was pointed out that when the Statute vests power in the Administrator appointed under Sub-section (5) of Section 14 to hold the election it was not open to the Registrar, Co-operative Societies to prepare an election programme and to circulate the same directing all the Administrators to hold elections in accordance with that programme.

4. Initially a stand was taken on behalf of the respondents that the Registrar has supervisory power over the Administrator in discharge of his duties under the provisions of the Act and while exercising such supervisory power, the Registrar can issue direction even in respect of holding of the election. In this connection our attention was drawn to Subsection (9) of Section 41 which has been also

introduced by the Ordinance aforesaid and which is as follows:--

"(9) The Registrar may issue such direction to the Administrator as to his powers and duties and the affairs of registered society as the Registrar deems desirable and the Administrator may apply to the Registrar at any time for instruction as to the manner in which the Administrator shall conduct the management of the registered society."

But the learned Advocate General, who appeared for the respondents, had to concede that Sub-section (9) being part of Section 41 which is applicable only in cases of supersession of the Managing Committees of the Co-operative Societies shall not override the special provisions under Sub-sections (5) and (6) of Section 14 which are applicable in cases where the old Managing Committees ceased" to exist as a result of coming into force of Sub-section (5) of Section 14 and a fresh election is to be held. Once it is held that the specific mandate of the Statute under Sub-sections (5) and (6) of Section 14 is that the Administrators so appointed shall hold the election, then he has to issue the election programme to hold the election. No mandatory direction can be given by the Registrar in respect of the duty enjoined on him by Section 14(6)(a). This aspect of the matter has been examined on different occasions by Courts. Reference can be made to the well-known judgment of the Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, .

5. The learned Advocate General, while defending the validity of order of Registrar dated 11-1-1989, pointed out that the Registrar could have issued direction to the different Administrators in respect of preparation of the list of the representatives who are entitled to participate at the election of the members of the Managing Committee of the different Co-operative Banks because that shall not be part of the election. He pointed out that the process of election normally commences when the persons who have to vote at such election are called upon to participate at the different stages of election according to the programme so notified; that stage is yet to come. In view of Sub-section (6)(a) of Section 14, even if the Registrar has fixed different dates in respect of the different stages of the election of the members of the Managing Committee of the Bank, neither the direction given in that order nor the dates fixed therein are binding on the Administrators. In other words, after 25th February, 1989, which has been fixed as the date for final publication of the list of the representatives, the further steps in connection with the election of the members have to be taken by the different Administrators and they are not bound by the programme prepared by the Registrar.

6. The impugned order says that the Registrar was issuing the order in question in exercise of the power under Rules 20 and 21. It has rightly been pointed out on behalf of the petitioner that Rules 20 and 21 shall not be applicable when the Managing Committee of different Co-operative Banks have ceased to exist on the date of the promulgation of the Ordinance as effect of Sub-section (5) of Section 14. In other words, the election is to be held not after dissolution of the

Managing Committee but after their statutory cessation. In this background, there was no occasion for the Registrar to empower different Administrators to hold election of requisite members of the Managing Committee according to the election programme prepared and circulated by the order dated 11-1-1989 because that power has been vested by Section 14(6)(a) in the Administrator. For the same reason, he cannot appoint even the Returning Officers because that will be a part of the process of the election. Returning Officers are to be nominated by the Administrators of the different Cooperative Banks.

7. Coming to the question as to whether the order can survive up to the stage of preparation of the list of the representatives, it was submitted on behalf of the respondents that the process of election commences only when the notice requiring the representatives or the voters to participate at the different stages of the election and continues till the declaration of the results. This aspect of the matter has been examined on several occasions by Courts where it has been pointed out that the election commences from the initial notification calling upon the constituency or the representatives who have to participate at such election by filing nomination papers and it culminates only with the declaration of the result. Reference in this connection may be made to the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In the case of Mohinder Singh Gill v. The Election Commissioner, New Delhi (supra), it was observed as follows (at p. 866 of AIR) :--

"The rainbow of operations, covered by the compendious expression "election", thus commences from the initial notification and culminates in the declaration of the return of a candidate."

Same view has been expressed in the case of Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman AIR 1985 SC 1233. In respect of preparation and revision of the electoral rolls it was pointed out in the case of Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman (supra) as follows (at p. 1245 of AIR):--

"We have expressed the view that preparation and revision of electoral rolls is a continuous process, not connected with any particular election. It may be difficult, consistently with that view, to hold that preparation and revision of electoral roll is a part of the "election" within the meaning of Article 329(b). Perhaps, as stated in Halsbury in the passage extracted in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the facts of such individual case may have to be considered for determining the question whether any particular stage can be said to be a part of the election process in that case. In that event, it would be difficult to formulate a proposition which will apply to all cases alike."

Although the aforesaid observations are in connection with Representation of the People Act but the principles enunciated in those judgments shall be applicable even to the election held under the provisions of the Act. In this background,

there should not be any difficulty in holding that the programme notified by the Registrar by the impugned order up to the stage of final publication of the list of the representatives who are entitled to participate at the election of the members of the Managing Committee shall not be deemed to be the part of the election so as to be hit by the provisions of Sub-section (6)(a) of Section 14. The process of election, according to us, shall commence when the notification shall be issued for preliminary general meeting of the representatives.. In the impugned order, 27-3-1989 has been fixed for issuance of such notification against serial No. 9. From that stage it is the Administrator who shall be at the helm of affairs and has to decide the date and time for holding of the preliminary annual general meeting as well as the date and time for holding annual general meeting and other steps thereafter. None of the Administrators of any of the Co-operative Banks is bound by the impugned orders issued by the Registrar since that stage and the Administrators have to take their own decisions in view of the mandate of Sub-section (6)(a) of Section 14. However, we hasten to add that it will be open to the Administrators to fix the date and time mentioned in the impugned order, if they are of the opinion that those dates should be fixed for different stages in the election. While doing so they have to take their own decision not bound by the direction of the Registrar, Co-operative Societies.

8. On behalf of the petitioner our attention was drawn to the fact that some of the Administrators pursuant to the election programme prepared and notified by the Registrar have issued communications to different Assistant Manager, Chairman and Secrcrtary of the Primary Societies to hold the election according to the programme prepared by the Registrar. We have no hesitation in saying that any direction in those communications, if it is interpreted to mean that the election must be held according to the programme prepared by the Registrar by the i impugned -order, then that part has to be ignored. Those communications shall, be deemed to be valid up to the preparation of the list of the representatives.

9. Accordingly, this writ application is allowed to the extent indicated above and we direct the Administrators to perform their statutory functions as enjoined by Section 14(6)(a) to hold the election including appointment of the Returing Officers without being influenced by the programme for the election prepared by the Registrar.