
(2005) 01 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 15543 of 2004

Virendra Kumar Roy and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Co-operative Societies Rules, 1959 — Rule 39

Citation : (2005) 1 PLJR 423

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. 2. The petitioner No. 1 is the chairperson of the petitioner No. 2, namely, Tirhut Dugdh Utpadak Sahkari Sangh Limited.

2. From the annexures annexed with the present writ application it appears that election of the managing committee of the petitioner No. 2 was conducted on 20th December, 2003 under Annexure-1. Learned counsel for the petitioner on being asked by this Court informed the Court that the petitioner society consist of almost about 115 members. The said members are the primary societies. The petitioner submits that the Registrar, Co-operative Societies acting under Rule 39 of the Co-operative Societies Rules, 1959 (hereinafter referred to as the Rules) proposed amalgamation of Bettiah Zila Dugdh Utpadak Sahkari Sangh Limited and Tirhut Dugdh Utpadak Sahkari Sangh Limited, Muzaffarpur. Though the petitioner's members were opposing the said amalgamation but before they could inform the Registrar that they were opposing the amalgamation, the respondent Registrar vide Memo. No. 5202 dated 24.9.2004 issued the order of amalgamation and constitution and registration of a new society. The said order is contained in Annexure-3. It is to be noted that the correctness. validity and propriety of Annexure-3 has not been challenged before me.

3. After amalgamation of the two societies and registration of a new society, the Deputy Registrar (Judicial) issued yet another order described in Memo No. 5893 on 8.11.2004 and required the Managing Director, Bihar State Co-operative Milk Producers Federation Limited, Patna to provide the name/names of certain person/ persons to look after the work and management of the society and for conducting the election of the Managing Committee. The petitioner is aggrieved by the said order as contained in Annexure-4.

4. Learned counsel for the petitioner submits that a society is to be run by the managing committee and the managing committee can only be dissolved in accordance with Section 41(1) or u/s 41 (5) of the Act. He submits that after the amalgamation the managing committee has not been dissolved under Annexure-3 therefore the petitioner whose term is still to go for next four years cannot be removed unceremoniously and new elections cannot be held. His further submission is that dissolution of the managing committee is a pre-condition for appointment of Administrator and in absence of dissolution of the managing committee the Administrator as proposed under Annexure-4 cannot be appointed. His further submission is that a perusal of Rule 39 under which the Registrar acted would clearly show that the managing committee cannot be dissolved and therefore the respondent Registrar or the Deputy Registrar could not call for the names to appoint an Administrator or a person to look into the affairs and management so that the work of the society goes on. According to him the action contained in Annexure-4 as taken by the respondents is patently without jurisdiction, it runs contrary to law and has no authority or protection of rules or any provision of law. It is submitted that Annexure-4 deserves to be quashed and the managing committee which came into existence in December, 2003 deserves to be continued for its fullest term up to December, 2008.

5. Before considering the arguments raised by the learned counsel for the petitioner, I wish to refer to Section 14 of the Act. Section 14 clearly provides that every registered society shall have an address, registered in accordance with the Rules, to which all notices etc. may be sent, the management of the registered society shall be vested in a managing committee constituted in accordance with the Rules. A bare understanding of Section 14 would make it clear that the management of every registered society, registered under the provisions of Bihar Co-operative Societies Act, 1935 shall vest in the managing committee, which is to be constituted in accordance with the Rules.

6. The said managing committee shall have the general powers of control over the administration, work, working, functions etc. of the society.

7. Learned counsel for the petitioner is absolutely justified in saying that the dissolution of the managing committee could be done in accordance with the provisions as contained in Section 41 of the Act. Sub-section (1) of Section 41 provides that if the Registrar is of the opinion that the managing committee of any registered society is mismanaging the affairs of the registered society or has failed to substantially improve the affairs of the society and is making defaults

etc. then the Registrar by order in writing after giving the managing committee an opportunity to state its objections, if any, dissolve the managing committee for any period not exceeding six months. Sub-section (3) of Section 41 provides that when a managing committee is dissolved under sub-section (1) the Registrar shall appoint an Administrator on such remuneration, if any, as he may fix, to carry on the business of society and the Administrator, shall subject to any direction issued by the Registrar from time to time exercise all the powers and perform all the duties under this Act, the Rules and the Bye-laws be exercised or performed by the managing committee or any Officer of the registered society.

8. Sub-section (5) of Section 41 further provides that the Registrar may dissolve the managing committee of a registered society in case where (a) majority of the members and elected office bearers of the managing committee of a registered society resign from their respective membership of office; or (b) half the total number of seats of the managing committee of a registered society, becomes vacant for any reason whatsoever. When the Registrar exercises his powers under sub-section (5) of Section 41 then too he has the powers to appoint an Administrator for the better management of the registered society.

9. It would be absolutely correct to say that an Administrator can be appointed by the Registrar, if the society is dissolved under sub-section (1) or subsection (5) of Section 41 of the Act.

10. Rule 39 provides for compulsory amalgamation of the society. It reads as under:-

"39. Compulsory amalgamation of societies.-(1) If the Registrar is satisfied, after taking into consideration the financial position of two or more societies and such other matters relating to the societies as may be proper, that it is in the interest of those societies to be amalgamated into a new society, he may, by order in writing, require the managing committees of societies concerned to convene general meetings of the share-holders and creditors thereof within six weeks from the date of the order, for the purpose of considering a proposal to amalgamate the societies into a new society.

(2) If the managing committee fail to call any such meeting for the purpose, or if the decision in any such meeting is against the proposed amalgamation, or no decision is taken at any such meeting the Registrar may on the expiry of six weeks from the date of his order and after satisfying himself that the interest of the creditors has been adequately safeguarded, direct that the said societies shall be amalgamated into a new society with effect from a date to be specified in the direction.

(3) The Registrar shall, with effect from the said date, register the new society and on such registration the assets and liabilities of the amalgamated societies shall vest in the new society.

(4) An appeal against an order passed under sub-rule (1) shall lie, within one

month from the date of such order,-

(i) if the order has been passed by any officer exercising the powers of the Registrar, to Registrar;

(ii) if the order has been passed by the Registrar, to the State Government.

(5) No action under sub-rule (2) shall be taken until the disposal of the appeal under sub-rule (4)."

11. Sub-section (1) provides that the Registrar shall ask the opinion of the managing committee of the registered societies proposed to be amalgamated, within a period of six weeks that whether they concede to or oppose the amalgamation. Subsection (2) provides that in case of failure of the managing committee to call for the meeting for the purpose of considering the question of amalgamation or if the decision in any such meeting is against the proposed amalgamation or no decision is taken at any such meeting the Registrar may on the expiry of six weeks from the date of his order and after satisfying himself that the interest of the creditors has been adequately safeguarded, direct that the societies shall be amalgamated and a new society would come in effect from a date to be specified in the direction. Under subsection (3) the Registrar is obliged to register the new society with effect from date as mentioned in sub-section (2) and on such registration the assets and liabilities of the amalgamated societies shall vest in the new society. If the parties are aggrieved by the proposed amalgamation then within 30 days from the date of such order they may challenge the order in appeal and during pendency of such appeal no action under sub-rule 2 of Rule 39 would be taken by the Registrar. A fair reading and understanding of Rule 39 would make it clear that after the proposal for amalgamation is floated the societies to be amalgamated have to call for a meeting, discuss the issue, concede to or reject the proposal. In any case the Registrar has the final authority to proceed further in the matter and if he opines after recording his satisfaction that amalgamation is a must then he may direct amalgamation of the existing societies into a new society. On amalgamation of the societies the existence of the erstwhile societies would certainly come to an end. The moment two societies are amalgamated into a new society and a new society is registered then the erstwhile managing committee of the erstwhile amalgamated society cannot say that they are entitled to continue for a total period for which they were elected. The moment two societies merge into one and a new society is constituted under the law and the said order is not challenged before any authority then constitution and creation of and coming into existence of the new society will have to be accepted as fail accompli. I repeatedly asked the learned counsel for the petitioner that in absence of a challenge to the order of amalgamation how could subsequent orders be challenged, learned counsel for the petitioner stated that neither they have challenged nor they are required to challenge the order of amalgamation. The moment a new society comes into existence and it is so registered, Section 14 of the Act would immediately come into operation then the new society will have to

elect a managing committee for the purpose of its management to control the day to day affairs etc. The dissolved managing committee of the Tirhut Dugdh Utpadak Sahkari Sangh Limited can not be allowed to say that as they were elected in December, 2003 they are entitled to continue up to 2008 December. The society has lost its identity and has merged into a new society. The moment society lost its existence the managing committee has also lost its existence, the existence of the managing committee is co-terminus with the life of the society or the statutory period. If the society continues beyond the period for which the committee was elected, fresh elections can always be held but if the society is dissolved or merged into a new society then the life of the managing committee would come to an end on the date of the dissolution/merger of the society.

12. If the argument of the petitioner is accepted it would lead to an impossible situation. What would the petitioners do if the managing committee of Bettiah Cooperative Union starts asserting that as the period of their managing committee has not come to an end they be allowed to rule the new society. Can two managing committees be allowed to rule one Cooperative Union, if the answer is a simple "No" then the petitioner's argument will have to be rejected.

13. In my considered opinion the legislature after taking into consideration all the pros and cons has legislated that after merger of two societies a new society should be brought into existence so that fresh elections are held and old managing committees are removed from the arena. The petitioners' submission are based on misconception of law. The petition deserves to and is accordingly dismissed. The respondents are certainly justified in proposing to appoint an Administrator so that the work etc. of the society is looked after properly and free and fair election in accordance with law are held and a managing committee is elected for the purposes of managing the affairs of the society.