

Bihar State Handloom Weavers' Union and Ors. Vs. State of Bihar and Ors.

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Court : Patna

Decided On : Feb-10-1994

Judge : Narbadeshwar Pandey and S.K. Chattopadhyaya, JJ.

Acts : Bihar Co-operative Societies Act, 1935 - Sections 14 and 14(10)

Appeal No. : C.W.J.C. Nos. 5907, 6543, 9416, 9709, 10406, 11129, 11744 and 12434 of 1993

Appellant : Bihar State Handloom Weavers' Union and Ors.

Respondent : State of Bihar and Ors.

Advocate for Def. : Ganga Prasad Roy and P.K. Shahi, Advs.

Advocate for Pet/Ap. : Jagdish Pd. Bhagat, Adv. in C.W.J.C. No. 5907 of 1993, Kishore Kumar Mandal, Adv. in C.W.J.C. No 9709 of 1993, Braj Ballabh Kumar, Adv. in C.W.J.C. No. 10406 of 1993 and Ramanugrah Pd. Singh, Adv. in

Disposition : Application dismissed

Judgement :

Narbadeshwar Pandey, J.

1. These writ applications are under Articles 226 and 227 of the Constitution of India for quashing a letter dated May 5, 1993, whereby the decision of the

Registrar, Co-operative Societies, Bihar, has been communicated that the term of the members of the managing committee of the registered societies will be three co-operative years in terms of Section 14, Sub-section (9) and the proviso to Sub-section (10) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act'). These applications although are on behalf of different petitioners but for a common relief. Therefore, with the consent of the parties, they are disposed of by this common judgment.

2. In order to appreciate the issue involved in these writ applications, it would be appropriate to have a brief survey of some of the facts. The petitioners are the members, office-bearers and board of directors of different registered co-operative societies. The State Government, being a major shareholder of the societies in question, in terms of Sub-section (4) of Section 14 of the Act, has a right to nominate some of the members of the managing committee, including the chairman, board of directors, etc.

3. At the annual general meeting of the co-operative societies, the members of the managing committee were elected. Thereafter, the State Government on different dates, nominated different members, in terms of Sub-section (4) of Section 14 of the Act. Upon such nomination, the members and office-bearers of the managing committee took over charge and started business. It appears, a controversy arose as to whether the term of the members and the office-bearers of the managing committee of a registered society will commence from the date of election or from the date of nomination by the State Government and the constitution of the managing committee. It would appear from annexure 'A' to the counter-affidavit of respondent No. 2 that the matter was referred to the Advocate-General for his opinion and after obtaining his opinion, the Registrar issued the letter dated May 5, 1993, which has been impugned.

4. In view of the facts stated above, a simple question arises for determination--whether the term of the managing committee will commence from the date of election of the members and office-bearers or it would be from the date of nomination by the State Government and constitution of the managing committee.

5. The learned advocates appearing for the petitioners contended that the impugned decision of the Registrar is contrary to the provisions of Section 14(9) of the Act and rule 22(2) of the Bihar Co-operative Societies Rules, 1959 (hereinafter called 'the Rules'). It was contended that if the provisions of Section 14, Sub-section (9), and rule 22(2) are read together, it would be clear that the period of three, co-operative years shall commence from the date of the constitution of the managing committee.

6. Before adjudication of the aforesaid controversy, it would be appropriate to notice some of the provisions of the Act and the Rules ; Section 14 of the Act and rule 22 prescribe the relevant provisions for constitution of a managing committee of the registered co-operative societies. As per Sub-section (2) of Section 14, the management of a registered society shall vest in the managing committee constituted in accordance with the rules. The proviso to Sub-section (1) of Section 14 gives an authority to the State Government to reserve seats, to be filled up by the members belonging to the scheduled castes and scheduled tribes.

7. Sub-section (3) of Section 14 of the Act authorises the State Government to depute certain Government officials, to have general control over the administration of the registered society and to convene meetings, etc., Sub-section (1) of Section 14 is a provision whereby and whereunder the State Government can nominate certain members for the constitution of the managing committee.

8. Sub-section (9) of Section 14 of the Act prescribes the term of the members and office-bearers of the managing committee of a registered society. It says that notwithstanding anything contained in the rules or bye-laws of a registered society, the term of the members and office-bearers of the managing committee shall be three co-operative years.

9. Sub-section (10) of Section 14 of the Act provides that in case, for any reason, the election is not held within the period prescribed under Subsection (9) including the grace period, the term of the managing committee shall stand superseded with effect from the said date, within the meaning of Section 41 and thereafter the business of the society shall be carried on in the manner provided by the section.

10. As per the first proviso to Sub-section (10) of Section 14, irrespective of the date when the election is held, the term of the members and officebearers shall be deemed to have commenced from the beginning of the co-operative year, in which the election is held. For easy reference, it would be useful to quote the provisions of Sub-sections (9) and (10) of Section 14 of the Act herein :

' (9) Notwithstanding anything contained in the rules or bye-laws of a registered society, the term of the members and the office-bearers of the managing committee of a registered society shall be three co-operative years, and they shall continue to hold office after expiry of their term till the elections are held or for nine months from the close of the cooperative year, whichever is earlier.

(10) If, for any reason, elections are not held within the said period after the expiry of the term of the members and the office-bearers of the

managing committee, the committee shall be deemed to have been super

seded with effect from the said date within the meaning of Section 41,

and thereafter, the business of the society shall be carried on in the manner

provided by the section :

Provided that irrespective of the date when the election is so held, the term of the members and the office-bearers of the managing committee shall be deemed to have commenced from the beginning of the co-operative year in which the elections are held :

Provided further that the members or the office-bearers who have held their respective offices beyond the period specified under Sub-section (3), before the coming into force of the Bihar Co-operative Societies (Sixth Amendment) Ordinance, 1974, shall be deemed to have validly held their respective offices.'

11. As per Sub-rule (1) of Rule 22 of the Rules framed under Section 66 of the Act, on the nomination by the State Government or the Registrar of such number of members, the managing committee as prescribed in the Act shall be constituted. As per Sub-rule (2), the managing committee and its office-bearers shall be

deemed to have taken over charge, immediately after the constitution of the managing committee, provided the constitution of the managing committee shall not be treated as complete unless and until members thereof will be duly elected or nominated by the competent authority. For easy reference, it would be useful to quote the provisions of rule 22 herein :

'22. Managing committee.-(I) Subject to nomination by the State Government and/or the Registrar of such number of members to the managing committee as prescribed in the Act, rules and bye-laws of a registered society, the managing committee of the society shall be constituted :

Provided that the election of the members of the managing committee and office-bearers thereof shall be held in accordance with the procedure laid down in Rules 21B to 21X.

(2) The members of the managing committee and the officebearers shall be deemed to have taken over charge immediately after the constitution of the managing committee

Provided that the constitution of the managing committee shall not be treated as complete unless and until the members thereof have been duly elected and/or nominated by the authority empowered to do so under the Act, rules and the bye-laws' of the society.'

12. According to learned counsel appearing for the petitioners, the term of the managing committee shall commence from the date of its constitution and not from the date of election. It was contended that from a bare reference to the provisions of Sub-rule (2) of Rule 22, it would appear that the members of the managing committee and the office-bearers shall be deemed to have taken over charge immediately after its constitution. It is contended that so long as the requisite number of members are not nominated by the State Government, the managing committee is not constituted. Simply because some of the members are elected, it cannot be said that the managing committee stands constituted. Therefore, it is urged that, with reference to the provisions of Sub-rule (2) of Rule 22, the term of the managing committee shall commence from the date of its constitution and not

from the date of election.

13. The respondents in all the cases have entered appearance and filed counter-affidavits. It has been pointed out on their behalf that the impugned decision of the Registrar was also under challenge before a Bench of this court at Ranchi in C.W.J.C. No. 2297 of 1993 (R). The writ application was disposed of by a Division Bench holding that the term of the members and office-bearers of the managing committee is three co-operative years from the date of election and not from the date when the constitution of the managing committee was completed on nomination. A copy of the judgment has also been annexed with the counter-affidavit.

14. Upon a consideration of all the relevant provisions and on a perusal of the judgment, I also find myself in complete agreement with the conclusion arrived at in the aforementioned cases. From a bare perusal of Sub-section (9) of Section 14, it would appear that the term of the members and office-bearers of a managing committee is three co-operative years. Such members and office-bearers can continue to hold office even on the expiry of their term till election is held or for nine months from the close of the co-operative year, whichever is earlier.

15. From the proviso to Sub-section (10) of Section 14 of the Act, it would appear that irrespective of the date when the election is so held, the term of the members and office-bearers of the managing committee shall be deemed to have commenced from the beginning of the co-operative years, in which the election was held. In other words the term of three cooperative years of the members and office-bearers of the managing committee shall commence from the beginning of the co-operative year. There is no provision under the Act or rules to suggest that the term of three co-operative years will begin from the date of constitution of the managing committee or nomination of its members by the State Government.

16. It would be useful to notice the contention of the learned advocates for the petitioners that in all the cases, nomination by the State Government was made much after the date of election. Therefore, in case it is held that the term of the managing committee begins from the date of election, the members so nominated will not have an opportunity to continue for three co-operative years.

17. No doubt, in some of the cases, due to laches and inaction of the executive, certain members who are so nominated by the State Government under the provisions of Sub-section (4) of Section 14 are deprived to hold office for the full term of three co-operative years but due to such inaction and laches of the executive, the mandate of the Legislature, fixing a tenure of three co-operative years, commencing from the beginning of the co-operative year, in which election was held, cannot be extended. On the other hand, there is no provision under the Act and Rules to show, that the term of the elected members and office-bearers, which is three co-operative years, can be extended, except in the manner prescribed under Sub-sections (9) and (10) of Section 14.

18. For the reasons stated above, I conclude and hold that the term of the members and office-bearers of the managing committee of a registered society, is three co-operative years, commencing from the beginning of the co-operative year in which the election is held. In view of the aforesaid finding, I find no merit in these writ applications.

19. Before parting with the judgment, in the facts and circumstances of the case, we feel inclined to direct the State Government to adopt a procedure so that in all the cases where the election of members and office-bearers of the managing committee is declared, the nomination under the provisions of Sub-section (4) of Section 14 of the Act must be made within a period of one month from the date of such declaration.

20. As we have held that the term of the managing committee of the petitioners-societies is three co-operative years from the date of declaration of the election of the members and office-bearers of the society and obviously the terms of these societies have expired, we direct the appropriate authority of the State Government including the respondent-Registrar of Co-operative Societies to take steps for holding the elections of these societies within three months from the date of receipt/production of a copy of this order before the Registrar.

21. In the result, all the writ applications are dismissed but in the circumstances of the case, there shall be no order as to costs.

S.K. Chattopadhyaya, J.

22. I agree.

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