

Saryug Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-09-1993

Judge : S.B. Sinha and R.N. Prasad, JJ.

Appeal No. : C.W.J.C. No. 5000 of 1993

Appellant : Saryug Singh

Respondent : The State of Bihar and ors.

Disposition : Application Allowed

Judgement :

S.B. Sinha, J.

1.This application is directed against an order dated 26-2-1993 passed by the District Magistrate, Nalanda whereby and whereunder the petitioner has been declared unfit to discharge his functions Up-Mukhiya purported to be in terms of the provisions of Section 79 of the Bihar Panchayat Raj Act (hereinafter referred to as 'the said Act').

2. The fact of the matter lies in very narrow compass.

The petitioner joined Central Co-operative Bank as a Peon and has been working in that capacity since then.

3. The Mukhiya of Karyanna Bindidih Gram Panchayat was removed whereafter the petitioner was elected to the post Executive member of the Panchayat and later on elected to the post of Up-Mukhiya. The petitioner was asked to perform the duties of the Mukhiya by an order dated 11-11-1992 as contained in Annexure-2 to the writ application.

4. However, as noticed hereinbefore, by reason of the impugned order, the District Magistrate had found that he cannot function as a Mukhiya in view of Section 79 of the said Act, which reads as follows :-

79. Disqualification of Mukhiya Member of Executive Committee Sarpanch etc.--
(1) Notwithstanding anything contained in this Act a person shall be disqualified for election nomination or appointment as a Mukhiya Member of the Executive Committee, (Sarpanch, or Panch) if such person--

(a) is not a subject of India.

(b) is in the service of the Central or State Government or any local authority or any institution receiving aid from the Government or any local authority ;

5. The petitioner in paragraph 9 of the writ application has stated as follows :

That it is stated that Central Co-operative Bank Ltd, Rajgir where the petitioner works as Peon does not receive any aid from the Government and as such the petitioner cannot be disqualified as Up-Mukhiya on account of being an employee of this Co-operative Society carrying on the business of the Banking.

6. Mr. Basant Kumar Choudhary, the learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that the petitioner being an employee of the Bank is neither an employee of the Central Government or the State Government or a local authority. According to the petitioner the Bank also does not receive any aid from the Central Government, State Government or any local authority and thus the provisions of Section 79 of the said Act cannot have any application in the instant case.

7. Section 79 of the said Act, as quoted hereinbefore, is a disqualifying Statute. The said provision is therefore, required to be construed strictly.

8. It is now well settled that in view of the decision of this Court in *Biscouman v. State of Bihar*, reported in 1993 (i) PUR 333, that a society registered under the Bihar and Orissa Co-operative Societies is not a State within the meaning of Article 12 of the Constitution of India.

9. The Co-operative Bank evidently is not also a 'Local Authority' within the meaning of Section 3(31) of the General Clauses Act.

In *State Bank of India, Employees Association v. Election Commission India*, in CWJC No. 7815 of 1991 disposed of on 21-5-1993, this has held that the State Bank of India is not a 'local Authority' within the meaning of section 159 of the Representation of People Act.

10. This being the petition in law, evidently the provisions of Section 79 of the said Act cannot be said to have any application whatsoever in the case of the petitioner.

11. However, the question as to whether the Co-operative Society is receiving any aid from the Government or a local authority is essentially a question of fact.

12. We have not applied our mind to this aspect of the matter. If this be not a position, the District Magistrate may pass a fresh order.

13. We may also clarify that we have not applied our mind as to whether any work of the Jawahar Rojgar Yojna should be taken from the petitioner or not, although he may discharge the functions of the mukhiya. That is a matter for the concerned authorities to decide.

14. For the reasons aforementioned, this application is allowed with the aforementioned observations but without any order as to costs.

P.N. Prasad, J.

15. I agree.

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