

Bhaskar Panda Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Aug-14-1986

Reported in : 62(1986)CLT450; 1986(II)OLR262

Judge : B.K. Behera and ;C.B. Pattnaik, JJ.

Acts : Constitution of India - Articles 226 and 227; Orissa Co-operative Societies Act - Sections 68

Appeal No. : OJC No. 1793 of 1984

Appellant : Bhaskar Panda

Respondent : State of Orissa and ors.

Advocate for Def. : D.P. Sahoo, Standing Counsel, ;R.C. Ram, B.M. Patnaik, M.K. Mallik and K.N. Jena

Advocate for Pet/Ap. : R.K. Mohapatra, K.B. Kar and B. Routray

Disposition : Petition allowed

Judgement :

G.B. Pattnaik, J.

1. The order of the Election Officer dated 27-7-1984 rejecting the nomination of Sri Bhaskar Panda, representative of Dhaleswar Service Co-operative Society, is

under challenge in the present writ petition.

2. The petitioner's case, briefly stated, is that election to the Board of Directors of the United, Puri-Nimapara Co-operative Bank Limited, Puri, was scheduled to be held on 1-4-1964. Nimapara Branch is a constituency of the said Bank consisting of 55 co-operative Societies and of those 55, Dhaleswar Service Co-operative Society is one of them. Under the provisions of the Co-operative Societies Act, where a Co-operative Society is a member of another Co-operative Society, it shall be represented by a delegate duly authorised in this behalf by the Committee of the member-society and the authorisation remains valid for one year, unless rescinded earlier by the General Body. Since Dhaleswar Service Co-operative Society is one of the electors for election to the Board of Directors of the Puri-Nimapara Central Co-operative Bank, the said society is required to send a delegate to represent the society. The management of Dhaleswar Service Co-operative Society had been vested upon the Registrar by operation of law as contained in Section 28(1-b) and the Registrar had appointed opposite party No. 3 as the authorised Officer to manage the affairs of the said Service Co-operative Society. A circular had emanated on 10th June, 1983 from the Office of the Registrar, Co-operative Societies, Orissa, annexed as Annexure-1 indicating that where the valid term of one year of the delegate selected by the Committee expires during the period when the management of the society is either under suspension or is under vesting with the Registrar, the administrator or the authorised Officer should convene a meeting of the General Body for the purpose of selecting the delegate of the society, so that such selection is made by a majority decision of the members of the society present in the meeting. Thus, notwithstanding the management of the affairs of the society devolving and notwithstanding the fact that the authorised Officer appointed by the Registrar has full power to manage the affairs of the society, the aforesaid circular contemplates that in the matter of selecting a delegate of the Society, it would be the power of the General Body to select its representative. The petitioner's case is that in accordance with the aforesaid circular and in a meeting held on 4-6-1984, the General Body of the Dhaleswar Service Co-operative Society elected Sri Bhaskar Panda as the delegate and the extract of the resolution has been annexed as Annexure-2 and the said Bhaskar Panda filed his nomination to contest in the

election which was scheduled to be held on 1-8-1984. But the Election Officer, opp. party No. 2, rejected the nomination on the ground that Sri Panda has been selected, to represent Dhaleswar Service Co-operative Society by the authorised Officer and not by the General Body which is in violation of the Registrar's Circular (Annexure-1) and accordingly the Election Officer held that the authorised Officer had acted beyond his jurisdiction. This order of rejection of nomination of Sri Bhaskar Panda has been, annexed as Annexure-4 and is being impugned in the present application.

3. Mr. R. K. Mohapatra, the learned counsel appearing for the petitioner, contends that Sri Panda having been elected to be the delegate of the Dhaleswar Service Co-operative Society in a meeting of the General Body on 4-6-1984, the Election Officer committed serious error of law in coming to the conclusion that there had been violation of the Registrar's circular (Annexure-1) and, therefore, the order of rejection of the nomination of Sri Panda must be quashed.

The stand of opp. party No. 4 who has been elected from the constituency in question is that rejection of nomination is a dispute Under Section 68 of the Act and, therefore, the petitioner has an alternative remedy of raising a dispute before the Registrar and consequently the extraordinary jurisdiction of this Court may not be invoked. It was also averred in the counter affidavit that no meeting of the Dhaleswar Service Co-operative Society was held on 4-6-1984 as alleged in the writ petition and Sri Panda was, therefore, not duly elected by any General Body meeting as required under the Circular of the Registrar under Annexure-1 and in that view of the matter, the order of rejection of nomination of Sri Panda as per Annexure-4 is legal and cannot be interfered with. The stand of the other opp. parties is that the resolution dated 4-6-1984 was not appended to the nomination that was filed on 24-7-1984 or even at the time of the scrutiny and, therefore/ the Election Officer was justified in rejecting the nomination. A rejoinder affidavit has been filed by the petitioner.

4. The only question which crops up for consideration is whether Sri Panda was elected to represent the Dhaleswar Service Co-operative Society in a meeting of the General Body as is asserted by the petitioner, held on 4-6-1984 or he was

nominated by the authorised Officer, opp. party No. 3, as contended by opp. party No. 4 and as held by the Election Officer, opp party No. 2. In this Court an application had been filed by the petitioner to direct the authorised Officer, opp. party No. 3, to produce the Minute Book of the Dholeswar Service Co-operative Society and by order dated 7-10-1985, the opp. party No. 3 was so directed. Pursuant to the aforesaid direction, the Minute Book of the Society was produced by the learned Standing Counsel appearing for opp. party No. 3. The said Minute Book clearly shows that in the meeting of the General Body held on 4-6-1984, Sri Bhaskar Panda was chosen to be the delegate of the society to participate in the election of the Board of Directors of Puri-Nimapara Central Co-operative Bank. The said resolution Book further shows that in the meeting dated 10-3-1984, it was decided to convene a meeting on 4-6-1984 and further in the agenda for the meeting dated 4-6-1984, the first item was to select a person to represent the society.

5. Mr. Ram appearing for opp. party No. 4 has contended that the aforesaid resolution dated 4-8-1984 is a concocted one and cannot be accepted. It is difficult for us to accept the aforesaid submission made on behalf of opp. party No. 4, since the resolution Book was produced from the custody of opp. party No. 3, a public officer, who is now in management of the affairs of the Society Further; We find that even in a meeting held on 1(3-3-1984, It was decided to hold a meeting of the General Body on 4-6-1984 to consider the question of sending a representative on behalf of the Society. The resolution Book is rage-marked and there is no feature in the resolution Book which would cast any suspicion about the genuineness of the same. Accordingly the conclusion becomes irresistible that in a meeting of the General Body of the Dholeswar Service Co-operative Society held on 4-6-1984, Sri Bhaskar Panda was elected to represent the society in the election scheduled to be held on 1-8-1984 to the Board of Directors of Puri-Nimapara Central Co-operative Bank. Consequently the conclusion of the Election Officer in Annexure-4 that representation of Sri Panda is contrary to the Circular of the Registrar under Annexure-1 is erroneous. In that view of the matter, the order of rejection is bad in law and is accordingly set aside).

6. It would be appropriate at this stage to note the other contention of Mr Ram, namely, existence of an alternate remedy by way of raising a dispute Under Section 68 of the Act which disentitles the petitioner to invoke the extraordinary jurisdiction of this Court under Art. 226 of the Constitution. Mr. Mohapatra in this regard contends that this being a pre-election dispute, it may not come within the meaning Under Section 68 and the learned counsel places reliance on the decision of this Court reported in 52(1981) CLT 319 (Kapilendre-Pothat v. Deputy Registrar, Co-operative Societies, Batasore Division and others). We are not expressing any opinion as to the correctness of Mr. Mohapatra's submission since in our view, even if it would be a dispute within the meaning of Section 68 of the Act, an existence of alternate remedy does not oust the jurisdiction of this Court under Art. 226 of the Constitution, of India. A valuable right of a society to contest in the election to the Board of Directors of the Central Bank has been infringed by an order of rejection of nomination which on the face of it appears to us to be illegal and is based on erroneous date. There is no question of investigation into disputed questions of fact and the error is apparent on the face of the impugned order. In such circumstances, the so-called alternate remedy of raising a dispute, even if it is held that the impugned order would come within the ambit of Section 68, in our opinion, cannot be held to be an efficacious one and, therefore, this Court would unhesitatingly exercise its jurisdiction under Art 226. It would be profitable to extract the observation of the Supreme Court in the case of Ram and Shyam Company v. The State of Haryana and others, U. J. (S. C.) 1986(1), 539 which reads thus :

'.....Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative 'remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in the State of U. P. v. Mohammad Noor (1958 SCR 595), it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or

invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that, an appeal her to the higher officer or the State Government. An appeal in all cases cannot be said to provide in ail situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits...'

Accordingly Mr. Ram's contention must be rejected.

7. In the ultimate result, therefore, the impugned order of rejection dated 28th July, 1984, of nomination of Sri Bhaskar Panda, representative of Dhaleswar Service Co-operative Society, as per Annexure-4 is hereby quashed and the said nomination must be treated to be a valid one. The necessary consequences, therefore, would be that so far as the election from the Nimapara Branch of the Central Co-operative Bank is concerned, which is Nimapara constituency, the election process would revert back to the position as it was on 28th July, 1984 and the ' Flection Officer would hold the election of the validly nominated candidates from the said constituency considering the petitioner to be a validly nominated candidate, after giving due intimation and in accordance with law. The writ petition is accordingly allowed.

8. We find from the order dated 6-8-1984 that though the election of the President was permitted to take place but the result of the election was not to be declared until further orders from this Court. We are told that election has been held as scheduled but the result has not been declared because of the interim order of this Court. It is indeed a pity that an elected body has been prevented from functioning by virtue of an interim order of the Court for more than one and half years. We would accordingly vacate the interim order passed by this Court on 6 8. 1984 and would direct that the result of the election of the President may be published notwithstanding our direction to hold election for Nimapara constituency afresh.