

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3912 of 2015

With

I.A. No.4589 of 2015

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Deepak Kumar, son of Baliram Prasad Sahai, resident of village- Birpur, Police Station- Kanti, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Cooperative Department, Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Joint Registrar, Cooperative Societies, Tirhut Division, Muzaffarpur.
4. The Assistant Registrar, Cooperative Societies, West Circle, Muzaffarpur.
5. The District Magistrate, Muzaffarpur.
6. The Sub Divisional Officer, West Muzaffarpur.
7. The District Cooperative Officer, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Singh
For the Respondent-State	:	Mr. Sanjay Kumar, AC to GA-12
For the Intervenor	:	Mr. Bindhyachal Rai

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-12-2015

Heard Mr. Sanjeev Kumar Singh, learned counsel appearing for the petitioner, Mr. Sanjay Kumar, learned Assisting Counsel to Government Advocate No.12 for the State and Mr. Bindhyachal Rai, learned counsel appearing for the interveners who are members of the newly elected Managing Committee of the Birpur Primary Agriculture Credit Cooperative Society in the district of Muzaffarpur.

The petitioner is aggrieved by the order dated 22.1.2015 of the Assistant Registrar, Cooperative Societies, West Circle, Muzaffarpur which is addressed to the Sub-Divisional



Officer (West), Muzaffarpur and the letter addressed to the Regional Representative, IFCO, Muzaffarpur impugned at Annexures 7 and 8 respectively, whereby directions have been issued to the respective authorities to put a stop on the supply of food-grains to the fair price shop being run by the society in question under the Bihar Public Distribution System (Control) Order (hereinafter referred to as 'the Control Order'), inter alia, on grounds that there were internal disturbances and discord within the managing committee of the society. It is considering such request that the Sub-Divisional Officer vide order dated 5.2.2015 impugned at Annexure-9 has detached the customers attached to the fair price shop in question and also put a stop on the allotment until further orders. The Chairman being aggrieved is before this Court.

A counter affidavit has been filed by the State as well as by the Sub-Divisional Officer and who have simply taken refuge to the request made by the members of the managing committee before the Assistant Registrar in this regard and who in turn has requested the Sub-Divisional Officer for taking necessary action and the Sub-Divisional Officer has mechanically accepted the request.

Mr. Sanjay Kumar, learned Assisting Counsel to Government Advocate No.12 and Mr. Bindhyachal Rai who has



registered appearance for the members of the managing committee by filing interlocutory application both have supported the impugned orders on a unified stand regarding a discord prevailing in the managing committee of which the petitioner happens to be the Chairman and that since after the constitution of the managing committee, the petitioner has failed to convene any meeting.

Even while the counsel representing the State and the interveners have spoken about the discord in the functioning of the managing committee there is nothing on record to demonstrate whether the functioning of the fair price shop by the society was marred by any irregularity. There is no dispute that the licence to the society for running a fair price shop has been granted under 'the Control Order' and thus the grant, withdrawal or suspension thereof are only to be governed by the provisions of 'the Control Order' or if the licensee has failed to abide by the terms and conditions of the licence. There is absolutely nothing on record to reflect any such violation by the licence-holder. The only thing that is being canvassed is the mistrust amongst the managing committee's members with the Chairman. I am rather surprised as to how the statutory authorities under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') as well as the licensing authority under 'the Control Order' have addressed themselves to



the issues. Whether or not there is a discord within the managing committee that cannot be a relevant factor for interference with the running of the fair price shop. The licence under 'the Control Order' is issued in the name of the society and not to a person in particular and thus any person operating the shop does it, as per the authorization by the society. A registered society is a body corporate having common seal with perpetual succession.

In my opinion, in such circumstances, there can not be any interference with the running of a fair price shop run by the society on the basis of a licence granted under the provisions of 'the Control Order' unless and until the society is found violating the terms and conditions of the licence and/or the provisions of 'the Control Order'. Thus until such time that the holder of the licence is disqualified to hold the licence itself, there can be no interference by the statutory authorities either under 'the Act' or under 'the Control Order' to interfere with the same.

Since it is an admitted position that it is on account of a dispute prevailing within the managing committee of the society which is the foundation for the impugned orders, hence in view of the discussions aforementioned the impugned directions issued by the Assistant Registrar as contained in his letter dated 22.1.2015 addressed to the Sub-Divisional Officer (West), Muzaffarpur placed

at Annexure-7, the letter dated 22.1.2015 addressed to the Regional Representative, IFCO, Muzaffarpur impugned at Annexure-8 and the consequential letter so issued by the Sub-Divisional Officer bearing Memo no.106 dated 5.2.2015 impugned at Annexure-9 are held *per se* illegal and are accordingly set aside.

Where a licence is issued in favour of the society it is the managing committee who authorises one of its member to operate the same. Since there is no dispute that the licence already runs in the name of one such member of the society, hence until such time that by a resolution of the managing committee the said operator is replaced by any other member, the person authorised shall continue to operate the shop.

The writ petition is allowed with the direction aforementioned. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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