

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3371 of 2015

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1. Kanhaiya Choudhary son of Late Gajju Choudhary, resident of village+ P.O. - Dhusiyakala, P.S. - Bikramganj , Distt. - Rohtas.

2. Bikramganj Prakhand Matsyajivi Samiti Ltd. Bikramganj through its Secretary Kanhaiya Choudhary son of Late Gajju Choudhary resident of village + P.O. - Dhusiyakala, P.S. - Bikramganj, Distt- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department, Bihar, Patna.

2. The Registrar Co-operative Societies, Bihar, Patna.

3. The Additional Registrar Co-operative Societies, Bihar, Patna.

4. The Joint Registrar Co-operative Societies, Patna Division, Patna.

5. The District Co-Operative Officer, Rohtas.

6. The Assistant Registrar Co-operative Societies, Bikramganj , District- Rohtas.

7. Md. Talib Hussain Administrator Bikramganj Prakhand Matsyajivi Sahyog Samiti Ltd. Bikramganj-cum-Co-operative Extension Officer, Bikramganj, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahasweta Chatterjee, Adv.

For the Respondent/s : Mr. Gyan Prakash Ojha- Gp22

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 22-06-2015 Heard Ms. Mahasweta Chaterjee, learned counsel for the petitioner and Mr. Pravin Kumar, A.C. to G.P.22 for the State.

The petitioner is aggrieved by the order bearing Memo No. 26 dated 10.01.2015 whereby the Managing Committee of the Matyasjivi Sahyog Samiti Ltd., Bikramganj has been superseded and an administrator has been appointed under Section 14(10) of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act').



A very short issue was raised by Mr. Chatterjee learned counsel for the petitioners to question the order of supersession and to submit that it was in violation of the statutory provisions underlying Section 41(1) of 'the Act' in as much as it has been passed without service any notice and without providing any opportunity of hearing to the petitioners. Since the issue of service of notice and an opportunity of hearing was an issue of fact to be proved by the respondents hence learned State counsel was directed to seek instructions and file counter affidavit on the limited issue and following which a counter affidavit has been filed enclosing a notice dated 13.8.2014 (Annexure-D) and 15.9.2014 (Annexure-E). On the strength of these notices it is sought to be impressed that though notices were issued to the petitioner-society but they never chose to contest the proceedings and it is in these circumstances that the order has been passed, an administrator has been appointed.

I have heard learned counsel for the parties and I have perused the records.

Section 41(1) of 'the Act' is very explicit and although power is vested in the Registrar to supersede a Board of any society and to appoint an administrator but such power is only to be exercised after giving opportunity of hearing to the Board or



the Managing Committee to state its objection. The author of the impugned order of supersession passed on 10.1.2015 (incorrectly mentioned as 10.1.2014 in the order impugned at Annexure-11) has through the supplementary counter affidavit tried to establish a service of notice but a bare perusal of Annexures-D and E to the supplementary counter affidavit manifests that they are mere notices addressed to the elected members of the society but there is nothing on record to establish its service on either of them. Except for these notices, neither any service register nor any other document is on record to establish the service of these notices on the elected body or its members. In fact the petitioners have categorically stated in paragraph 10 of the writ petition that the entire proceedings has been conducted behind their back and that no opportunity has been provided to the society to contest the proceedings but such statement has been sought to be contested on the strength of the notices placed at Annexures-D and E which merely reflect its issuance but are not sufficient enough to establish its service on the society or its Chairman/Secretary or its office bearers.

Mr. Pravin Kumar referring to the enquiry report of the District Cooperative Officer, a copy of which is placed at Annexure-8 of the writ petition has tried to establish that it is



owing to large scale irregularities prevailing in the functioning of the society which has prompted the action taken by the statutory authority but the fact remains that the petitioners were never confronted with the irregularities so accounted for in the report placed at Annexure-8 nor was the society or its office bearers given an opportunity to rebut the same. In fact, even the impugned order passed by the District Cooperative Officer bearing Memo No.26 dated 10.01.2015 is a non speaking order which sweepingly charges the society of violating its bye-laws without making any discussion on the alleged violations.

An order passed by a statutory authority should reflect an application of mind and which is unfortunately absent in the present case. The statutory power vested in a Registrar under Section 41 of 'the Act' is an extreme power to be exercised in extreme circumstances and only after giving reasonable opportunity to the society and its office bearers to meet the charges but in so far as the present case is concerned, I am of the opinion that it has been exercised in a routine manner and the statutory authority without satisfying itself as to the manner of service of notice on the society or the office bearers, has mechanically accepted the service and proceeded to pass the order which apparently is ex-parte.



In fact the mechanical manner in which the proceeding has been carried out is manifest from the fact that though the order of supersession has been passed under Section 41 of 'the Act' which further in Sub section (3) provides for appointment of Administrator but the District Cooperative Officer while passing the order is completely oblivious to the statutory provisions and has illegally invoked Section 14(10) to appoint the Administrator when the said provision is only to cater to circumstances where the tenure of a society has expired and there is a delay in holding an election.

For the reasons aforementioned, I am not persuaded to uphold the order dated 10.1.2015 passed by the District Cooperative Officer, Rohtas at Sasaram impugned at Annexure 11 to the writ petition and it is accordingly set aside. The writ petition is allowed.

The order aforementioned however would not preclude the statutory authority to move afresh but in accordance with law.

(Jyoti Saran, J)

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