

Achutyanand Singh and Another

Vs

State of Bihar and Others

Writ Petition No. 238 Of 1968

(G. K. Mitter, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

04.05.1971

JUDGMENT

DUA, J. -

1. The petitioners in this petition under Article 32 of the Constitution are Achutyanand Singh and the Kaithwalia Cane Growers' Co-operative Society registered under the Bihar and Orissa Co-operative Societies Act, 1935. Petitioner No. 1 is the Secretary of Petitioner No. 2, the Co-operative Society. The facts necessary for the disposal of this Writ Petition lie in a very narrow compass and are not disputed. We consider it unnecessary for our present purpose to refer to the earlier events including the correspondence between the Co-operative Department and the petitioners in the background of which the impugned order, dated January 22, 1968, was made, because they have no material bearing on the question of the invalidity of the impugned order.

2. Ignoring therefore the earlier history of the controversy between the Cane Growers' Co-operative Societies and the Government Department of Co-operative Societies relating to the amalgamation of the Cane Growers Co-operative Societies into Multi-purpose Co-operative Societies, we need only being with the order, dated November 25, 1967, passed by the Assistant Registrar, Co-operative Societies, Bettiah directing the petitioner society to take steps for amalgamation of the petitioner society with the other Co-operative Societies mentioned therein. Against this order, an appeal was filed by the petitioner on December 14, 1967, with the Registrar, Co-operative Societies (Bihar) at Patna, under Rule 39(4) of the Bihar and Orissa Co-operative Societies Rules, 1959. While this appeal was pending, the Assistant Registrar, Co-operative Societies, passed another order on January 22, 1968, by means of which he compulsorily amalgamated the petitioner Society with three other societies mentioned therein so as to form a new Multi-purpose Co-operative Society. It is in these circumstances that the present writ petition was presented in this Court on August 10, 1968, challenging the two orders of the Assistant Registrar. The impugned order, dated January 22, 1968, reads as under :

"CHANPATIA COMMUNITY DEVELOPMENT BLOCK Name of Societies to be amalgamated -

(1) Bankat Kaithwalia M.P.C.S. (2) Bankat C.G.C.S. (3) Kaithwalia C.G.C.S. (4) Shambhanpur C.G.C.S.

Whereas the above noted societies which have been functioning independently are extremely weak, both structurally and financially, to attain a viable status so as to deliver the goods expected from them until and unless they are amalgamated to form a new society and whereas the meaning

committee of the above noted societies have failed to convene a meeting in compliance to my order No. 49-A, dated November 25, 1967, issued under Section 39(1) of the Bihar Co-operative Societies Rules, 1959, while the Society/Societies mentioned against serial..... above convened a meeting of share-holders and creditors thereof which took no decision which is not in the interest of these societies and whereas six weeks have expired from the date of my orders referred to above, I, after satisfying myself that interest of the creditors have been adequately safeguarded direct under sub-rules (2) and (3) of Rule 39 of the Bihar and Orissa Co-operative Societies Rules, 1959 that the aforesaid societies should be amalgamated into a new society, namely, Bankat Kaithwalia M.P.G.S. Society, and I hereby register the new society and the bye-laws thereof with effect from January 22, 1968.

It is further ordered that the assets and liabilities of the amalgamated societies shall vest in the new society and the registration of the amalgamating societies shall stand cancelled."

3. Shri Chagla raised three contentions in this Court. According to the first contention the Assistant Registrar who passed the impugned orders was not competent to do so because the power to make such orders was not delegated to him under the law. According to the second contention during the pendency of the petitioner's appeal with the Registrar no further order could be passed by the Assistant Registrar with the result that the order, dated January 22, 1968, was wholly unauthorised and therefore void. This challenge is founded on sub-rule (5) of Rule 39. At this stage it would be helpful to reproduce Rule 39 :

"39. Compulsory amalgamation of societies - (1) If the Registrar is satisfied, after taking into consideration the financial position of two or more societies and such other matters relating to the societies as may be proper, that it is in the interest of those societies 'to be amalgamated into a new society, he may, by order in writing, require the managing committees of the societies concerned, to convene general meetings of the share-holders and creditors thereof within six weeks from the date of the order, for the purpose of considering a proposal to amalgamate the societies into a new society.

(2) If the managing committees fail to call any such meeting for the purpose, or if the decision in any such meeting is against the proposed amalgamation, or no decision is taken at any such meeting, the Registrar may, on the expiry of six weeks from the date of his order and after satisfying himself that the interest of the creditors has been adequately safeguarded, direct that the said societies shall be amalgamated into a new society with effect from a date to be specified in the direction.

(3) The Registrar shall, with effect from the said date, register the new society and on such registration the assets and liabilities of the amalgamated societies shall vest in the new society.

(4) An appeal against an order passed under sub-rule (1) shall lie, within one month from the date of such order -

(i) if the order has been passed by any officer exercising the powers of Registrar, to the Registrar;

(ii) if the order has been passed by the Registrar, to the State Government.

(5) No action under sub-rule (2) shall be taken until the disposal of the appeal under sub-rule (4)."

4. The last contention attacked the impugned order, dated January 22, 1968, on the ground that along with the registration of the new amalgamated society the bye-laws of the petitioner society were also altered and this according to the petitioner's submission further violates vested rights of the petitioner society. Under Section 26 of the Bihar and Orissa Co-operative Societies Act the Registrar can amend the bye-laws only if it is necessary or desirable to do so in the interest of such society. In the instant case it was argued there is no question of amending the bye-laws in the interest of the society which has been compulsorily amalgamated with other societies.

5. Shri D. P. Singh, the learned counsel for the respondents, in reply placed reliance on a notification (No. 1186), dated November 16, 1965, by means of which the power of Registrar, inter alia, under Rule 39 of the Bihar and Orissa Co-operative Societies Rules was conferred on the Assistant Registrar. This notification was not relied upon in the counter affidavit. It was published in the Bihar Gazette (Extra-ordinary), dated May 1, 1968, and a copy of the Gazette Notification was actually produced at the time of hearing in this Court. The question arises if this notification was operative, and the Assistant Registrar could lawfully claim to take action under the delegated authority, on November 25, 1967 and January 22, 1968.

6. Before considering the merits of this contention, we consider it proper to refer to some of the statutory provisions. The Bihar and Orissa Co-operative Societies Act (No. VI of 1935) was enacted in May, 1935, to consolidate and amend the law relating to Co-operative Societies in the State of Bihar and Orissa. Under Section 6(1) the State Government is empowered to appoint a person to be a Registrar of Co-operative Societies for the State or any portion of it, and also to appoint persons to assist such Registrar. Under sub-section (2) :

"The State Government may, by general or special order published in the Official Gazette, confer, -

(a) on any person appointed under sub-section (1), to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers under Section 26, and

##(b) X X X X X.###

It is obvious that the powers of a Registrar can be conferred on a person appointed under Section 6(1) by means of a general or special order published in the Official Gazette. As the notification in the present case was published in the Official Gazette on May 1, 1968, the order conferring the Registrar's power on the Assistant Registrar mentioned therein could not be operative before that date and no valid order under Rule 39 could be made by any such Assistant Registrar prior to that date.

7. The next relevant statutory provision is Rule 39 of the Bihar Co-operative Societies Rules, 1959, made under Section 66 of the Act. This rule has already been set out. It is clear that so long as the appeal remains pending with the Registrar of the State Government, as the case may be, no order can be made under sub-rule (2). It is not disputed before us that the petitioner society had appealed from the order of the Assistant Registrar, dated November 25, 1967 to the Registrar and that on January 22, 1968, that appeal was pending. Indeed it is still pending awaiting disposal. In view of the fact that on January 22, 1968, when the order under Rule 39(2) was made by the Assistant

Registrar, the appeal against the order, dated November 25, 1967, was pending with the Registrar, the order, dated January 22, 1968, must be held to be contrary to law and therefore void. Once this order is struck down the challenge to the order, dated November 25, 1967, will have to be decided by the Registrar before whom the appeal from that order is pending and we do not consider it either necessary or proper to express any opinion on that point.

8. The third contention also stands accepted because the new bye-laws were enforced by means of the order, dated January 22, 1968, and if that order is struck down the new bye-law would fall with it.

9. This writ petition is accordingly allowed with costs and the order, dated January 22, 1968, struck down as void.

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