

Chandrika Jha vs State Of Bihar & Ors on 27 October, 1983

Equivalent citations: 1984 SCR (1) 646, 1984 SCC (2) 41, AIR 1984 SUPREME COURT 322, 1984 UJ (SC) 1, 1983 BLJR 670, 1984 BBCJ 7, 1984 CO-OP TJ 256, (1984) PAT LJR 1, (1984) BLJ 92, (1984) 20 COOPLJ 137, (1984) 55 COMCAS 347, 1984 (2) SCC 41

Author: A.P. Sen

Bench: A.P. Sen, E.S. Venkataramiah

PETITIONER:
CHANDRIKA JHA

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT 27/10/1983

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1984 SCR (1) 646 1984 SCC (2) 41
1983 SCALE (2) 888

ACT:

Constitution of India 1950, Article 154(1) 'Executive power' of State-Exercise by Governor-Supervisory jurisdiction of State Government under statute-Whether exercisable under 'executive power'.

Bihar & Orissa Co-operative Societies Act, 1935. S. 65A.

Bihar Co-operative Society Rules, 1959 Bye-Law 29. District Co-operative Bank-First Board of Directors nominated by Registrar-Expiry of term-Chief Minister extending term from time to time-Minister-in-charge forwarding list of names with directive to Registrar to make appointment therefrom-Such action whether valid.

Administrative Law-Chief Minister or Minister-in-charge whether can exercise the functions of a statutory authority.

HEADNOTE:

Bye-law 29 of the Bihar Co-operative Society Rules, 1959 provided that the management of a Co-operative Bank shall vest in the Board of Directors, and that the first Board of Directors shall be nominated by the Registrar for a period not exceeding one year at a time and not exceeding three Co-operative years in the aggregate, and that the Registrar could modify the nomination if and when required.

The Registrar, Cooperative Societies in exercise of the power conferred by the aforesaid bye-law nominated a Committee of Management of 17 members to the first Board of Directors of the District Co-operative Bank. The Committee was directed to get the election of the Board of Directors completed within six months of the date of their nomination. The appellant who was a political person was nominated to be the Secretary of the first Board.

The appellant got the period of the first Board of Directors extended from time to time and the election of the Board postponed without any lawful justification. Between October 1981 and November 1983 at the instance of the appellant, the Chief Minister gave directions to the Minister (Co-operation), that the Registrar be asked to extend the term of the Board, and the Registrar

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in turn extended the term with the direction that the Committee of Management should call a general meeting and get the Board of Directors elected.

When the Chief Minister demitted office, the third respondent, who was the Minister for Industries issued a direction to the Commissioner of the Co-operative Department, marked as 'unofficial'. It was stated therein that if the Committee was reconstituted the Board shall legally consist of seven members only. For this purpose seven names were sent. If the Committee was superseded it was to consist of fifteen members. On a separate sheet the Minister indicated the first set of seven names and second set of eight names.

In compliance with the Minister's directive the Registrar by his impugned order in supersession of all earlier orders reconstituted the first Board of Directors with immediate effect and directed that the tenure of the office of the reconstituted Board shall be for the remainder of the term i.e. till November 30, 1983.

Being aggrieved, the appellant assailed the order by a writ petition in the High Court, which was dismissed.

On appeal to this Court, it was contended on behalf of the appellant that the Registrar had no power to reconstitute the Board under bye-law 29 and that in any event the Minister could not issue any direction to the Registrar as to the reconstitution of the Board. The respondents, however, contended that the Chief Minister had illegally usurped the statutory functions of the Registrar

and passed several orders and that the Minister was justified in issuing the requisite orders.

Allowing the appeal,

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HELD: 1. Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 9. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in-charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29 in extending the term of the first Board of Directors from time to time. [655 A, 654 C-D]

2. The executive power of the State vested in the Governor under Art. 154(1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers" may
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include powers such as the supervisory jurisdiction of the State Government under s. 65A of the Act. The action of the Chief Minister cannot however be supported by the terms of s. 65A of the Act inasmuch as there was no proceeding pending before the Registrar in relation to any of the matters specified in s. 65A of the Act nor had the Registrar passed any order in respect thereto. [654 E-G]

For the same reasons, it must be held that the Minister for Industries also exceeded his own authority in directing the manner in which the new Board of Directors was to be constituted by the Registrar under bye-law 29 by forwarding a list of 7 names to be nominated by him in the reconstituted Board and a further list of 8 names indicating that if the Committee of Management was superseded under another provision, it should consist of those 15 persons. [655 C-D]

3. Under bye-law 29, the Registrar had the power to reconstitute the first Board of Directors or to curtail the extended term. Proviso to bye-law 29 lays down that the first Board of Directors shall be nominated by the Registrar for a period not exceeding one year at a time and not exceeding three cooperative years in the aggregate. It however does not entail the consequence that when the term of the first Board of Directors is extended from time to time, it must necessarily extend to three cooperative years.

That apart, the extended term of the first Board of Directors was to enure "till further orders" and therefore the Registrar had reserved to himself the right to curtail the extended term by reconstituting the Board, at any time. [655E-656A]

Upon this view, the Court directed (i) the Registrar, Cooperative Societies, to take over the District Central Cooperative Bank and exercise all the powers and perform all the duties vested in the Committee of Management which under the Bihar & Orissa Cooperative Societies Act, 1935 and the Bihar Cooperative Societies Rules, 1959 and the bye-laws thereunder are vested in the Committee of Management. And (ii) the Registrar, either himself or through an Officer in the Cooperative Department designated by him, shall call a general meeting of the Society and require the society to elect a new Board of Directors.[656 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10296 of Appeal by Special leave from the Judgment and Order dated the 30th September, 1983 of the Patna High Court in Pramod Swarup for the Appellant.

K.N. Rai for the Respondent.

The Judgment of the Court was delivered by SEN, J. The controversy in this appeal by special leave against an order of the Patna High Court dated September 13, 1983 relates to the legality and propriety of the action of the Chief Minister of a State in issuing certain directions, and incidentally the scope and extent of the power of a Minister to interfere with the working of a statutory functionary under his department.

The facts are that on the bifurcation on the district of Muzaffarpur and creation of the new districts of Muzaffarpur and Hajipur, a separate Central Co-operative Bank called the Vaishalli District Central Co-operative Bank for the district of Hajipur was registered with its registered bye-laws. Bye-law No.29 of the said registered bye-laws provides inter alia as follows:

"29. Management: The Management of the Bank shall vest in a Board of Directors which will consist of 17 persons:

XX XX XX XX XX Provided also that the first Board of Directors of the Bank shall be nominated by the Registrar, Co- operative Societies, Bihar for a period not exceeding one year at a time and not exceeding three Co-operative years in aggregate and that the Registrar, Co-operative Societies may modify the nomination if and when required."

The Registrar, Co-operative Societies, Bihar, in exercise of the powers conferred by bye-law 29 by his order dated July 22, 1981 nominated a Committee of Management of 17 members, including the appellant, to be the first Board of Directors of the Co-operative Bank for a period of six months i.e. upto December 31, 1981, or till further orders, whichever was earlier. The Committee of Management was specifically directed to get the election of the Board of Directors of the Central Bank held in accordance with the law within six months of the date of their nomination and the Registrar by the order had reserved his discretion to make changes in the nomination of the Board by the use of expression 'until further orders'. The Registrar by his letter dated October 1, 1981 directed the Committee of Management to complete the election of the Board of Directors of the Bank as per programme laid down therein by December 20, 1981 as the six months' term of the nominated Board was going to expire on December 31, 1981. Copies of the letter were endorsed to the District Co-operative Officer, Vaishalli for necessary action as also to the Executive Officer of the Bank stating that it would be his personal responsibility to get the desired steps taken in that connection as per the time schedule fixed. In accordance therewith, the District Co-operative Officer, Vaishalli by his letter dated October 23, 1981 directed the Executive Officer of the Co-operative Bank to get the election of the Board of Directors completed by December 20, 1981.

The case illustrates an unfortunate trend which has now become too common these days in the governance of the country. The appellant who was nominated to be the Secretary of the first Board of Directors and is apparently a political person had a direct approach to the seat of power viz., the then Chief Minister Dr. Jagannath Misra. The result was that the first Board of Directors as constituted by the Registrar kept on flouting with impunity the repeated directions of the Registrar, Co-operative Societies in that behalf, since they were not interested in holding the general meeting for the purpose of election of the Board of Directors. Instead of complying with the directions of the Registrar, the appellant by using the letterhead of the District Congress Committee (1), Vaishalli and after bypassing the Registrar of Co-operative Societies and all other officials, directly approached Dr. Jagannath Misra, the then Chief Minister of Bihar, and got the term of the first Board of Directors extended from time to time and the election of the new Board postponed without any lawful justification. The then Chief Minister made an endorsement thereon dated October 29, 1981 addressed to the Minister (Co-operation) with a direction that the Registrar should extend the period of the Committee of Management for the time being. The Registrar was constrained by his order dated November 26, 1981 to extend the term of the Committee of Management for a period of six months i.e. till June 30, 1981 but he nonetheless gave a specific direction to the Committee of Management to call the general meeting and get the Board of Directors elected within the extended term, but this was of no avail. On April 21, 1982 the appellant addressed a letter to the then Chief Minister for further extension of the term of the Committee of Management by one year and the then Chief Minister made an endorsement thereon addressed to the Minister (Co-operation) to take necessary steps for extending the term. Again, the Registrar by his order dated June 21, 1982 was forced to extend the term of the nominated Board of Directors for a period of one year i.e. upto May 31, 1983, or until further orders, whichever was earlier. Nevertheless, the Registrar while extending the term again made a direction requiring the Committee of Management to call the general meeting to get the new Board of Directors elected but despite the said direction, no such meeting was ever called. On April 13, 1983, the appellant again addressed a communication to the then Chief Minister for extension of the term of the nominated Board of Directors for a period of one year from June 1,

1983 and the then Chief Minister by his order dated June 13, 1983 extended the term for six months and endorsed the same to the Minister (Co-operation). The Registrar accordingly by his order dated June 23, 1983 further extended the term of the nominated Board till November 30, 1983, or till further orders, whichever was earlier. While extending the term, he again made a specific direction to the Committee of Management to call the general meeting for the aforesaid purpose.

With the resignation of the then Chief Minister on August 13, 1983, the respondent No. 3 Laliteswar Prasad Shahi, Minister for Industries for the State of Bihar appears to have issued a direction on September 5, 1983 to the Commissioner of the Co-operative Department. The communication was marked as 'unofficial' and was to the following effect:

"If the Committee is reconstituted, the Board shall legally consist of 7 members only. For this purpose, 7 names are being sent. When the Committee is superseded under another provision, it may consist of even 15 members. For this purpose, 8 names are being sent on a separate page."

On a buff-sheet, the Minister indicated the first set of seven names and the second of eight names.

In compliance thereof the Registrar by his impugned order dated September 6, 1983 in supersession of all his earlier orders reconstituted the first Board of Directors with immediate effect and directed that the tenure of office of the reconstituted Board shall be for the remainder of the term i.e, till November 30, 1983, or till further orders, whichever was earlier.

The short question that falls for determination is whether the then Chief Minister was entitled to usurp the functions of the Registrar of Co-operative Societies under bye-law 29. Further, the question is whether the Minister was entitled to issue a direction to the Registrar of Co-operative Societies to reconstitute the nominated Board of Directors under bye-law 29; and if so, whether he could go further and assume the functions of the Registrar and forward to him a list of names to be nominated on the reconstituted Board. Under bye-law 29, it is the function of the Registrar to constitute the first Board of Directors which necessarily carries with it the incidental or ancillary power to reconstitute such Board when he is satisfied that the circumstances attendant so require.

It is urged on behalf of the appellant that the Registrar had no power to reconstitute the Board under bye-law 29 and that in any event the Minister could not issue any direction to the Registrar as to the manner in which the Board was to be reconstituted. The contention to the contrary advanced by the respondents is that the then Chief Minister had illegally usurped to himself the statutory functions of the Registrar under bye-law 29 and passed the several orders in question to oblige the appellant and a handful of persons who retained their control over the Central Cooperative Bank contrary to the scheme of the Act, and that upon his demitting the office of the Chief Minister, the Minister for Industries was fully justified in issuing a direction to the Registrar for reconstitution of the Board. It is said that the Minister was an important political worker in the district of Vaishalli and he was informally asked to suggest the names of suitable persons to the Registrar for his consideration. The communication referred to was addressed by the Minister to the Commissioner of the Cooperative Department and marked as 'unofficial' merely contained his

informal suggestion. The submission is that the Minister is entitled to issue a direction of this nature to a statutory functionary under his department and therefore the Registrar had necessarily to act under the directions of the Minister.

The Bihar & Orissa Cooperative Societies Act, 1935 ('Act' for short) is intituled as: "An Act to consolidate and amend the law relating to Cooperative Societies in the States of Bihar and Orissa", and the Preamble recites that the object and purpose of the legislation was "to facilitate the formation working and consolidation of cooperative societies for the promotion of thrift, self-help and mutal aid among agriculturists and other persons with common needs".

Sub-s.(1) of s.7 provides that a society which has as its objects the promotion of the common interests in its members in accordance with cooperative principles, or a society established with the object of facilitating the operations of such a society, may be registered under the Act with or without limited liability. Sub-s. (1) of s.11 provides that if the Registrar is satisfied that a society has complied with provisions of the Act and the Rules and that its proposed bye-laws are not contrary to the Act, or to the Rules, he may, if he thinks fit, register the society and its bye-laws. Sub-s. (2) of s. 14 of the Act provides that the management of a registered society shall be vested in a managing committee constituted in accordance with the Rules. Sub-s.(3) of s. 14 of the Act provides that the term of office of the elected members and office-bearers of the managing committee of the society shall be as provided in the bye-laws of the society and the elected members and office-bearers shall continue to hold office after the expiry of their term till their successors are elected or for three months, whichever is earlier. A Central Cooperative Bank is a financing Bank within the meaning of s.2(c) which means a registered society the main object of which is to make advances in cash or kind to other registered societies or to both such societies and agriculturists. From the very nature of things, a Central Cooperative Banks holds large sums of money. Under the scheme of the Act, the Registrar of Cooperative Societies is charged with the duty of administering all cooperative societies within the State.

The Bihar Cooperative Societies Rules, 1959 provide that, subject to nomination by the Registrar of such number of members to the managing committee and in such manner as may be prescribed by him, a managing committee of a registered society including its office-bearers shall be elected by vote from among the members of the society at the annual general meeting held in accordance with the bye-laws. Bye-law 29 read with the proviso confers power on the Registrar to constitute the first Board of Directors of the Central Cooperative Bank. Under the second part of the proviso to bye-law 29, he has the necessary power to reconstitute such Board.

S. 65A of the Act, on which reliance is placed, runs thus:

"65-A. Notwithstanding anything to the contrary contained in this Act, the State Government may, of its own motion or on an application made to it by any party aggrieved by the constitution, or reconstitution, amalgamation, election, supersession, liquidation or any other matter concerning working of the society, call for any record of inspection or enquiry made under this Act or proceedings of any matter pending before the Registrar or his subordinate or any person acting under

his authority and examine and pass such orders as it may deem fit."

We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first Board of Directors. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29 in extending the term of the first Board of Directors from time to time. The executive power of the State vested in the Governor under Art. 154 (1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government under s.65A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.

The action of the then Chief Minister cannot also be supported by the terms of s.65A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in s.65A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under s.65A of the Act. In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules.

Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 29. The act of the then Chief Minister in extending the term of the Committee of Management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The Act as amended from time to time was enacted for the purpose of making the cooperative societies broad-based and democratizing the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act.

For the same reasons, it must be held that the Minister for Industries also exceeded his own authority in directing the manner in which the new Board of Directors was to be constituted by the Registrar under bye-law 29 by forwarding a list of 7 names to be nominated by him in the reconstituted Board and a further list of 8 names indicating that if the Committee of Management was superseded under another provision, it should consist of those 15 persons.

There is no warrant for the submission that the Registrar had no power to reconstitute the first Board of Directors under bye-law 29 or to curtail the extended term. While the proviso to bye-law 29 lays down that the first Board of Directors shall be nominated by the Registrar for a period not

exceeding one year at a time and not exceeding three cooperative years in the aggregate, it does not entail the consequence that when the term of the first Board of Directors is extended from time to time, it must necessarily extend to three cooperative years. The expression "cooperative year" is defined in s.2 (bb) to mean the year beginning from the 1st of July to the 30th of June. The second part of the proviso expressly confers power on the Registrar to modify the nomination of such Board, if and when required. On a reading of bye-law 29 read along with the proviso, it is manifest that the first Board of Directors is entitled to hold office for a period not exceeding three cooperative years in the aggregate, unless it is reconstituted by the Registrar within the aforesaid period. That apart, the order passed by the Registrar dated July 22, 1981 nominating the first Board of Directors was for a period of six months i.e. upto December 31, 1981 or till further orders. The words "till further orders" appear in all the subsequent orders extending the term of the Board and therefore the Registrar had reserved to himself the right to curtail the extended term by reconstituting the Board, at any time. In the instant case, however, the impugned order issued by the Registrar to reconstitute the first Board of Directors was not made by him at his own discretion in the exercise of his powers under bye-law 29 but was made at the behest of the Minister for Industries and it must accordingly be held to be invalid.

In the circumstances of the case, we feel it proper to direct the Registrar, Cooperative Societies, Bihar to take over the Vaishalli District Central Cooperative Bank and exercise all the powers and perform all the duties which under the Bihar and Orissa Cooperative Societies Act, 1935 and the Bihar Cooperative Societies Rules 1959 and the bye- laws of the Central Cooperative Bank are vested in the Committee of Management. The Registrar shall either himself or through an Officer in the Cooperative Department designated by him call a general meeting of the society at such time and place at the headquarters of the Central Cooperative Bank and to require the society to elect a new Board of Directors. We further direct that neither the members of the first Board of Directors constituted by the Registrar of July 22, 1981, nor the so-called Board of Directors reconstituted by him on September 6, 1983, shall interfere with the affairs of the society. In compliance with these direction, the Registrar of Cooperative Societies will issue immediate instructions for taking over the management of the Central Cooperative Bank and may designate an Officer in the Cooperative Department to discharge the duties and functions of the Committee of Management till a new Board of Directors is constituted in accordance with law.

The appeal is disposed of accordingly. There shall be no order as to costs.

N.S.K.

Appeal allowed.