

Dinesh Prasad Yadav vs The State Of Bihar & Ors on 13 January, 1995

Equivalent citations: 1995 SCC, SUPL. (1) 340 JT 1995 (2) 45, 1995 AIR SCW 836, (1995) 1 SCR 220 (SC), 1995 SCC (SUPP) 1 340, (1996) 1 BANKLJ 325, (1995) 82 COMCAS 653, (1995) 1 LANDLR 490, (1995) 2 JT 45 (SC)

Author: Kuldeep Singh

Bench: Kuldeep Singh, B.L Hansaria

PETITIONER:
DINESH PRASAD YADAV

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT 13/01/1995

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1995 SCC Supl. (1) 340 JT 1995 (2) 45
1995 SCALE (1) 153

ACT:

HEADNOTE :

JUDGMENT :

1. The term of office of the members ,of the Managing Committee of a society registered under the Bihar Co- operative Societies Act, 1935 (the 'Act') and the Bihar Co- operative Societies Rules, 1959 (the Rules) is three "co- operative years". The State Government, under the Act, has a right to nominate - depending upon its share in the share- capital of the society certain number of members to the Managing Committee of a society. The question for consideration is whether the three-year

term of the Managing Committee is to be counted from the beginning of the cooperative year' in which the elections by ballot are held or from the 'co-operative year' when the nominations are made by the State Government?

2. Before stating the necessary facts, it would be useful to examine the relevant provisions of the Act and the Rules. These are Sections 2(bb), 2(e), 14(2), 14(4), 14(9) and the first proviso to Section 14(10) reading as under:-

"2(bb) 'Cooperative year' means a year beginning with the 1st April and ending on the

3 1st March/ 2(1) 'Managing Committee' means the committee of management or other body to whom the management of the affairs of a registered society is entrusted.

14(2) The management of registered society shall be vested in a managing committee constituted in accordance with the rules:

14(4) Notwithstanding anything contained in any provision of this Act, the rules framed thereunder or the bye-laws of any registered society where the State Government has --

(a) subscribed directly to the share capital of a registered society; or

(b) assisted indirectly in the formation or augmentation of the share capital of a registered society; or

(c) given loans or made advances to a registered society or guaranteed the repayment of principal and payment of interest on debentures issued by a registered society for or guaranteed the repayment of principal and payment of interest on loan or advances to a registered society;

in that case the State Government shall have the right to nominate on the Managing Committee of such registered society not more than two persons one of whom shall be a Government servant, but the said Government servant shall have no right to vote in the election of the office bearers of the registered society;

Provided that notwithstanding the foregoing provisions contained in Sub-sections 4(a),(b) and (c)

(i) Where the share of the State Government in the share capital of such registered society exceeds thirty per cent but does not exceed fifty per cent, the State Government shall have the right to nominate upto one third of the total number of the members of the Managing Committee including the Chairman; and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than twenty five per cent;

ii) Where the share of the State Government in the share capital of such registered society exceeds fifty per cent, but does not exceed sixty per cent of the total share capital of the registered society, the State Government shall have the right to nominate such number of members of the Managing Committee including the Chairman, as is nearest upto one-half of the total, and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than forty five per cent;

iii) Where the share of the State Government in the share capital of such registered society exceeds sixty per cent, the State Government shall have the right to nominate upto two-thirds of total number of members of the Managing Committee including the Chairman, and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than fifty five per cent;

Provided that notwithstanding anything contained in proviso (i), (ii) and (iii) of sub-section (4), the State Government shall not nominate Chairman and other members of the Managing Committee if the share capital subscribed to by the State Government in a registered society is less than fifteen lakhs of rupees;

Provided further that where the bye-laws of a registered society so provide the State Government or the Registrar, as the case may be, may nominate more than two third members including office bearers of the Managing Committee on such terms and conditions as may be prescribed in the bye-laws;

14(9) Notwithstanding anything contained in the rules or bye-laws of a registered society, the term of the members and the office-bearers of the Managing Committee of a registered society shall be three co-operative years, and they shall continue to hold office after expiry of their term till the elections are held or for nine months from the close of the co-operative year, whichever is earlier;
14(10).....

Provided that irrespective of the date when the election is so held the term of the members and the office-bearers of the Managing Committee shall be deemed to have commenced from the beginning of the co-operative year in which the elections are held:

..... Rules 2(xvi), 21A, 22(1) and 22(2) of the Rules which are relevant are reproduced hereunder:

"2(xvi) 'Election' means election, in accordance with these Co-operative Society;

21 -A Notwithstanding any rule and bye laws of any society the election of the members of the Managing Committee, office-bearers thereof and the delegates of the society shall be held in a Special General Meeting according to rule 20(2)(a) to (c).

22. Managing Committee --

(1) Subject to nominations by the State Government and/or the Registrar of such number of members to the Managing Committee as prescribed in the Act, Rules and bye-laws of a registered society, the Managing Committee of the society shall be constituted:

Provided that the election of the members of the Managing Committee and office-bearers thereof shall be held in accordance with the procedure laid down in Rule 21 -B to 21 -X. (2) The members of the Managing Committee and the Office-bearers shall be deemed to have taken over charge immediately after the constitution of the Managing Committee:

Provided that the constitution of the Managing Committee shall not be treated as complete unless and until the members thereof have been duly elected and/or nominated by the authority empowered to do so under the Act, Rules and the Byelaws of the Society.

3. Dinesh Prasad Yadav, the appellant, was a member of the Managing Committee of the Kaithar District Central Co-operative bank (the 'Bank') along with respondents 5 to 12.

They were elected as such by votes on January 20, 1991 under Rule 21A of the Rules. The State Government being a major shareholder in the share capital of the Bank it has the right to nominate upto one-third of the total member of the Managing Committee of the Bank, including the Chairman. Though the elections by way of ballot were held on January 20, 1991, the State Government made the nominations to the Managing Committee of the Bank as late as March 2, 1993. It is not disputed that the Managing Committee was not permitted to function till March 2, 1993 on the ground that it got constituted under Rule 22 of the Rules only after the nominations were made by the State Government.

4. The Managing Committee of the Bank had hardly started functioning when by the Order dated March 5, 1993, the State Government informed the Committee that its term was to expire on March 31, 1993. The State Government, on the basis of the opinion obtained from the law department and the Advocate General of the State, came to the conclusion that the elections having been held on January 20, 1991, the term of office of the Managing Committee under the first proviso to Section 14(10) of the Act would be deemed to have commenced from April 1, 1990 (beginning of the co-operative year) and would come to an end on March 31, 1993 (end of the third co- operative year).

5. The appellant and respondents 5 to 12 challenged the order of the State Government dated March 5, 1993 by way of a writ petition before the Patna High Court. A Division Bench of the High Court following its earlier judgment in Bihar State Handloom Weavers Union & Ors. v. State of Bihar & Ors., CWJC No. 6543 of 1993 and connected matters decided on February 10, 1994, dismissed the writ petition by the impugned order dated March 2, 1994. In Bihar State Handloom Weavers case the High Court proceeded on the following reasoning:-

"No doubt, in some of the cases, due to laches and inaction of the executive, certain members who are so nominated by the State Government under the provisions of subsection (4) of Section 14 are deprived to hold office for full term or three co-operative years, but due to such inaction and laches of the executive, the mandate of legislature, fixing a tenure of three cooperative years, commencing from the beginning of the cooperative year, in which election was held, cannot be extended. On the other hand, there is no provision under the Act and Rules to show that the term of the elected members and office bearers, which is three co-operative years, can be extended, except in the member prescribed under subsections (9) and (10) of Section 14."

This appeal, by way of special leave, is against the impugned order of the High Court. The appellant has also challenged the correctness of the High Court judgment in Bihar State Handloom Weavers case.

6. Sri Sunil Gupta, learned counsel appearing for the appellant, has vehemently contended that the Managing Committee constituted under the Act and the Rules has three- year term in office and the same cannot be reduced by giving an isolated meaning to the first proviso to Section 14(10) of the Act thereby rendering the provisions of Rule 22(2) of the Rules as otiose. He further contended that various provisions of the Act and the Rules are to be harmoniously interpreted to give purposeful meaning to the said provisions. In the alternative the learned counsel contended that the provisions of the Act which permit the State Government to reduce the office term of the Managing Committee from three years to three weeks, as happened here, are wholly arbitrary and cannot be sustained in the eyes of law.

7. The provisions of the Act and the Rules, quoted above, clearly indicate that the scheme of the Act gives wide powers to the State Government to control those societies in which it has considerably contributed towards the share capital. The State Government can nominate even upto two- third of the total members of the Managing Committee including the Chairman. It would, therefore, be in tune with the scheme of the Act to hold that the Managing Committee cannot assume office till the time the nominations are made by the State Government. Proviso to Rule 22(2) of the Rules rightly provides that the Managing Committee shall not be treated as complete unless the members thereof have been duly elected and/or nominated by the authority empowered to do so under the Act, Rules and bye-laws of the Society.

8. The expression 'election' has not been defined under the Act. In the absence of any definition by the legislature we have to follow the ordinary meaning given to the said expression. Collins English Dictionary defines 'election' as under:

"The selection by vote of a person or persons from among candidates for a position, esp. a political office. The act or an instance of choosing.

Webster Comprehensive Dictionary, International Edn., gives the following meaning to the expression 'election':

"The selection of a person or persons for office as by ballot. A choice, as between alternatives, choice in general."

9. The expression 'election', therefore, means selection of a person by vote or even otherwise. When a person is nomi-

nated by way of selection on the basis of a given criteria from amongst several persons, then in the broader sense he is elected to the office. We are of the view that the expression 'elections', in the first proviso to Section 14(10) of the Act, has been used in the broader sense. It includes election by ballot as well as the choice by nomination. This interpretation would make Rule 22(2) of the Rules workable. Section 14(2) of the Act vests the management of a registered society in a Managing Committee constituted in accordance with the Rules. Section 14(4) further provides that even upto two-third members of the Managing Committee can be nominated. Sub-section (8) of Section 14 further imposes bar on the members of the Managing Committee for re-election after they have held two consecutive terms. Rule 22(2) read with Section 14(2) of the Act makes it abundantly clear that constitution of the Managing Committee is to be treated as complete only when the elections by ballot as well as the nominations are finalised. Even otherwise, to fulfill the avowed object of the Act and to encourage and promote the co-operative movement in the State, it is necessary that the Managing Committee as constituted under Rule 22(2) of the Rules should be given its full tenure of three co-operative years. Having provided for three years' term in office to the Managing Committee of a Society, it could not be the intention of the legislature to leave it to the State Government to reduce the same to as short a period as three weeks, which would be a mockery. We, therefore, hold that in the first proviso to Section 14(10) the expression 'the co-operative year in which elections are held' means not only the elections by way of ballot, but also the nominations under the Act. The net result is that the term of the Managing Committee under the Act and the Rules is to commence from the beginning of the co-operative year in which the nominations by the State Government are completed and the Managing Committee is constituted in terms of Rule 22(2) of the Rules.

10. Although the expression 'election' has been defined under the Rules, but the said definition has been specifically confined to the election in accordance with the Rules. The election under Rules 21B to 21X is only by way of ballot. There is no provision for nominations under the Rules. therefore, the definition of 'election' under Rule 2(xvi) read with Rules 21B to 21X only means the election as provided under the Rules by way of ballot. The expression 'election' as defined under the Rules has to be interpreted in the context of the Rules and would not, therefore, go contrary to the interpretation given by us to the said expression in the context of the provisions of the Act.

11. Ordinarily, in view of the interpretation given by us to the relevant provisions of the Act and the Rules, we should have directed that the Managing Committee of the Bank whose election was completed in March, 1993 be put back in office and given a three year term from April 1, 1992, but on the facts and circumstances of this case, we are not inclined to do so. After the impugned order of the High Court, fresh elections to the Managing Committee of the Bank have taken place on July 5, 1994. The General Body of the Bank having elected fresh members to the Managing Committee of the Bank, it would not be in the interest of justice to set aside the same. Even if we give relief to the appellant, the old Committee gets tenure only upto March 31, 1995. We do not wish to reverse the

process to give benefit to the appellant only for a short period.

12. We allow the appeal in the above terms and set aside the impugned order of the High Court. We further hold that the judgment of the Patna High Court in CWJC No. 2297 of 1993 (R) does not lay down the correct law. The appellant shall be entitled to costs which we quantify as Rs. 15,000/- to be paid by the State Government.