

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9491 of 2015

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1. Vinay Kumar, S/o Late Jagan Singh, R/o village + P.O. Shorampur, P.S. Janipur, District-Patna
 2. Farsi Rai, S/o Late Sadhu Rai, R/o- village + P.O. Shorampur, P.S. Janipur, District-Patna
 3. Baby Devi, W/o Anup Kumar, R/o-village-Dharaichak, P.O. Shorampur, P.S. Janipur, District-Patna
 4. Parmeshwar Rai, S/o-Late Nanhak Rai, village-Janipur, P.O. Shorampur, P.S. Janipur, District-Patna
 5. Ashok Kumar Singh, S/o Late Anant Singh, R/o village-Nizampur, P.O. Shorampur, P.S. Janipur, District-Patna
 6. Rekha Devi, W/o Mina Manjhi, R/o village+P.O. horampur, P.S. Janipur, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Co-operative Department, Government of Bihar, Patna
2. The Registrar, Co-operative Societies, Bihar Patna
3. District Co-operative Officer, Patna
4. The Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna
5. Shorampur Primary Agriculture Credit Co-operative Society Ltd, Shorampur, in short "Shorampur PACS" under Phulwarisharif Block, District-Patna, through its PACS Manager
6. Mahendra Prasad Gupta, S/o Late Saguni Sao, village-Adhpa, P.O. Shorampur, P.S. Janipur, District-Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10440 of 2015

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Sudama Devi wife of Ram Chandra Yadav resident of village Chand-Pipar, P.S. Kishanpur, district Supaul, presently elected as Chairman, PACS, Chandpipar, Block- Saraigarh Bhaptiyahi, District Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Co-operative, Govt. of Bihar, Patna.
2. The District Magistrate, Supaul.
3. The Join Registrar, co-operative Societies, Koshi Division Saharsa.
4. The District Co-operative officer -cum- A.R, Co-operative Society, Supaul.
5. The Block Development officer -cum-Election Officer, Saraigarh Bhaptiyahi, Supaul.
6. The Bihar State Election Tribunal, Patna through its Chief Election Officer.
7. Ram Prasad Yadav son of late Mahesh Yadav, resident of village+P.O.- Chandpipar, P.S. -Kishanpur, district Supaul.
8. Gita Devi wife of Janardan Prasad Yadav, resident of village+P.O.- Chandpipar, P.S. -Kishanpur, District Supaul.
9. Jagdish Mandal son of Satto mandal, resident of village+P.O.- Chandpipar, P.s -

Kishanpur, District Supaul.

10. Draupadi Devi wife of Ganesh Prasad Yadav
11. Bhubneshwar Mandal son of Paitram Mandal, resident of village-Jarauli, P.O.- Chandpipar, P.S. -Kishanpur, District- Supaul.
12. Dukhan Mandal son of late Siyaram Mandal, resident of village-Kulipatti, P.O.- Chandpipar, P.S. -Kishanpur, District- Supaul.
13. Ganesh Ram son of Dhuani Ram, resident of Village+P.O.- Chandpipar, P.s - Kishanpur, district Supaul.
14. Dulari Devi wife of Bacha Prasad Mandal, resident of Village-Kulipatti , P.O.- Chandpipar, P.S. -Kishanpur, district Supaul.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 11665 of 2015

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1. Indradeo Prasad son of Rajkishore Prasad, resident of village- Pakri, P.S.- Masaurhi, District- Patna
2. Ravindra Paswan son of Jagdeo Paswan, resident of Jagpura Bigha, P.S.- Masaurhi, District- Patna
3. Lalan Prasad son of Subbalal Prasad, resident Pakri, P.S.- Masaurhi, District- Patna
4. Smt. Pushpa Devi Wife of Kundan Paswan, Resident of Jagpura Bigha, P.S.- Masaurhi, District- Patna
5. Smt. Suchita Devi wife Nagendra Singh, resident of Dariyapur, P.S.- Masaurhi, District- Patna
6. Smt. Bidyawati Devi wife of Ram Niwas Prasad, resident of village + P.O.- Bhaishwan, P.S.- Masaurhi, District- Patna
7. Raj Kishore son of Late Ram Sweak Prasad, resident of village- Tetai, P.S.- Masaurhi, District- Patna

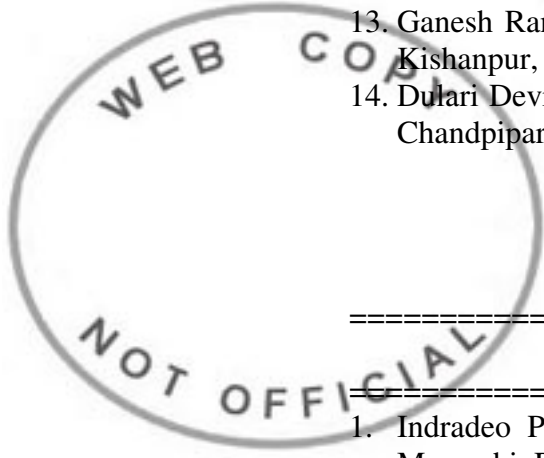
.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna
2. The Registrar Cooperative Societies, Bihar, Patna
3. The Bihar State Election Authority, 32, Harding Road, Patna through its Chief Election Officer
3. The Additional Registrar Cooperative Societies, Bihar, Patna
4. Smt. Renu Devi wife of Ranjit Prasad
5. Smt. Sona Devi Wife of Lal Bihari Prasad
6. Satyendra Pandit son of Dhura Pandit
7. Ram Devan Prasad son of Bhanu Prasad All residents of village- Pakri, P.S.- Masaurhi, District- Patna
8. Reshmi Devi wife of Satyendra Thakur, resident of village- Pakri, P.S.- Masaurhi, District- Patna
9. Sunil Kumar Keshri son of Satish Kumar Keshri, Village- Jagpura Bigha, P.S.- Masaurhi, District- Patna
10. Bhaishwan PACS through its Paid Manager, At + P.O.- Bhaishwan, P.S.- Masaurhi, District- Patna

.... Respondent/s

with



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Civil Writ Jurisdiction Case No. 12371 of 2015

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Ajit Kumar Singh, son of Sri Krishna Singh, resident of village-Parasiya, Police Station-Kochas, District-Rohtas at Sasaram

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperation, Bihar, Patna
2. The Bihar Election Authority through its Chief Election Officer, Bihar, Patna
3. The Chief Election Officer, Bihar, Patna
4. The Registrar, Cooperative Society, Bihar, Patna
5. The District Magistrate, Rohtas at Sasaram
6. The District Cooperation Officer, Rohtas at Sasaram
7. The Block Development Officer-cum-Returning Officer, Block-Kochas, District-Rohtas at Sasaram
8. The Kochas Primary Agriculture Credit Society through its Manger, Kochas, District-Rohtas at Sasaram
9. Umesh Kumar Singh, son of Tej Narayan Singh, resident of village-Debriya, Police Station-Kochas, District-Rohtas at Sasaram
10. Bijay Kharwar, son of Mushaheb Kharwar, resident of village-Khairi, Police Station-Kochas, District-Rohtas at Sasaram
11. Jagnarain Singh, son of late Ram Balak Singh, resident of village-Adilapur, Police Station-Kochas, District-Rohtas at Sasaram
12. Astorna Devi, wife of Lal Bihari Singh, resident of village-Adilpur, Police Station-Kochas, District-Rohtas at Sasaram
13. Santosh Kumar Pathak, son of Sri Jainarayan Pathak, resident of village-Baradi, Police Station-Kochas, District-Rohtas at Sasaram
14. Kamal Nayan Upadhayay, son of Late Saryug Upadhayay, resident of village-Tetariay, Police Station-Kochas, District-Rohtas at Sasaram
15. Bharat Ram, son of Digpal Ram, resident of village-Tetariay, Police Station-Kochas, District-Rohtas at Sasaram
16. Dewanti Devi, wife of Madan Sah, resident of village-Parasiya, Police Station-Kochas, District-Rohtas at Sasaram
17. Shakuntala Devi, wife of Sheshnath Choubey, resident of village-Andwa, Police Station-Kochas, District-Rohtas at Sasaram
18. Sunita Devi, wife of Sunil Kumar Singh, resident of village-Debriya, Police Station-Kochas, District-Rohtas at Sasaram

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4245 of 2015

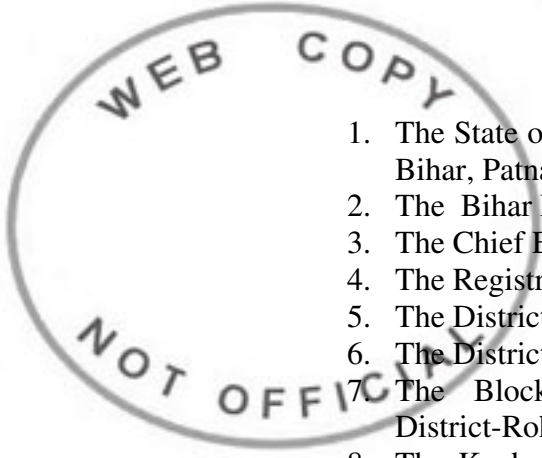
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Indrajeet Singh son of Late Hemraj Singh, resident of village- Padariya, Block-Suryapura, Police Station- Suryapura, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Joint Registrar, Co-operative Society, Patna.
3. The Registrar, Co-operative Society, Patna.
4. The District Co-operative Officer, Rohtas, Sasaram.



5. The Block Development Officer, Block- Suryapura, District- Rohtas (Sasaram).
6. The Additional Secretary, Bihar State Election Authorized Bihar Patna.
7. Kunti Devi wife of Shiv Kumar Singh R/o village- Kalani P.S. Suryrpura, District- Rohtas.
8. Ramesh Singh son of Rajeshwar Singh R/o village- Kalani P.S. Suryrpura, District- Rohtas.
9. Laxman Thakur son of Late Shyam Bihari Thakur R/o village- Kalani P.S. Suryrpura, District- Rohtas.
10. Meera Devi wife of Santosh Pandey R/o village- Kalani P.S. Suryrpura, District- Rohtas.
11. Meera Devi wife of Jawahar Thakur R/o village- Kalani P.S. Suryrpura, District- Rohtas.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6330 of 2015

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Punam Devi wife of Dhananjay Giri, resident of village - Mangarpal, Nauran, P.O. - Tarba Mangarpal, P.S. - Dariyapur, District - Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Joint Registrar, Cooperative Societies, Saran Division, Chapra.
4. The District Cooperative Officer, Saran at Chapra, District - Saran at Chapra.
5. The Block Development Officer, Dariyapur, District - Saran at Chapra.
6. Anjani Kumar Singh son of Late Sri Bijali Singh,
7. Bishwanath Mahto, son of Late Nagina Mahto,
8. Lal Babu Rai, son of Sri Bhageran Rai,
9. Urmila Devi, wife of Sri Lakshmi Narain Singh,
10. Jagnasi Devi, wife of Paras Pandit, respondent nos. 6 to 11 are resident of village - Mangarpal, Nauran, P.O. - Tarba Mangarpal, P.S. - Dariyapur, District - Saran at Chapra.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12455 of 2015

=====

Ashok Kumar Singh son of Suresh Singh, resident of village-Kanker, P.S. Baren, District-Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Co-operative, Government of Bihar, Patna
2. The Principal Secretary, Department of Co-operative, Government of Bihar, Patna
3. The Registrar Co-operative Societies Bihar, Patna

4. The District Co-operative Officer, Aurangabad
5. The Block Co-operative Extension Officer, Navi Nagar, Aurangabad
6. The Bihar State Election Tribunal through its Chief Election Officer, Bihar, Patna

.... Respondent/s

Appearance:

(In CWJC No.9491 of 2015)

For the Petitioner/s : Mr. Ishwari Singh, Advocate
Mr. Surendra Kumar Mishra, Advocate
Mr. Manish Kumar Singh, Advocate

For the Respondent/s : Mr. Ashok Kumar, SC-11

(In CWJC No.10440 of 2015)

For the Petitioner/s : Mr. Pramod Mishra, Advocate
Mr. Arun Kumar, Advocate
Mr. Vijay Kumar Mukul, Advocate

For the Respondent/s : Mr. Satya Deo Kumar, SC-5
Mr. Mukesh Kumar, Advocate

(In CWJC No.11665 of 2015)

For the Petitioner/s : Mr. Rakesh Kumar Jha, Advocate

For the Respondent/s : Mr. Mithilesh Kumar Pathak, SC-7
Mr. Arun Kumar Pd., AC to SC-7
Mr. Yogendra Mishra, Advocate

(In CWJC No.12371 of 2015)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr. Shyam Bihari Singh, Advocate
Mr. Jai Prakash Singh, Advocate

For the State : Mr. Kumar Manish, SC-21

For B.S.E.A. : Mr. Mukesh, Advocate

For respondent no. 9 to 13 & 18:

Mr. Ishwari Singh, Advocate
Mr. Surendra Kr. Mishra, Advocate
Mr. Manish Kr. Singh, Advocate

(In CWJC No.4245 of 2015)

For the Petitioner/s : Mr. Sajid Salim Khan, Advocate

For the Respondent/s : Mr. Nasim Yahya, G.P. -13

(In CWJC No.6330 of 2015)

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate
Mr. Chandan, Advocate

For the State : Mr. Uday Shankar Sharan Singh, GP-1

For State Election Authority: Mr. Mukesh Thakur

For the respondent nos. 6 to 11:

Mr. Madhuresh Prasad, Advocate
Mr. Shyameshwar Kumar Singh, Advocate
Mr. Chaitanya Swaroop, Advocate

(In CWJC No.12455 of 2015)

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Uma Shankar, GP-4

Mr. Karandeep Kumar, AC to G.P.-4

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 17-08-2015



In these batch of writ petitions whereas the petitioners in CWJC No. 9491 of 2015 are aggrieved by the order dated 05.05.2015 / 19.05.2015 of the Registrar, Co-operative Societies, Bihar, Patna in Revision Case No. 13 of 2015 whereby the revision petition filed by the petitioners praying for a declaration for holding the election of the entire Managing Committee of Primary Agriculture Credit Co-operative Society (hereinafter referred to as 'the PACS'), Shorampur, Block Phulwarisharif in the district of Patna has been rejected, the petitioners in the remaining set of writ petitions are aggrieved by the orders passed in the respective cases by the Registrar whereby the respective co-operative societies of which the petitioners are members / chairman have been dissolved in exercise of powers vested in the Registrar under Section 41(5) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act') and the rules framed thereunder inter alia on grounds of vacancies to the extent of more than half of the strength of the Managing Committee having been caused by virtue of resignation of the membership.

Since the issue raised in these set of writ petitions centre around the same issue regarding the extent of power vested in a Registrar under Section 41(5) of 'the Act' to order for dissolution of the society where the vacancies caused by resignation exceed half the strength of the society and whether the provision saves any power with the Registrar of keeping such of the members / office bearers of

the society out of such dissolution who have not chosen to resign, that these writ petitions have been heard analogous with the view to final disposal at the stage of admission itself.

Briefly enumerating, the facts involved in the respective writ petitions are as follows:-

As I have already pointed out, CWJC No. 9491 of 2015 has been filed by the six members of the Shorampur 'PACS' who have resigned from the elected membership of the society comprising of 12 elected posts including that of a Chairman and one *ex officio* Secretary / Paid Manager. The election of the Managing Committee was held on 10.11.2014 and result was declared on 11.11.2014 electing the petitioners as members and respondent no. 6 as Chairman. The petitioners resigned from their elected membership which was received on 24.11.2014 by the Chairman. An application was filed before the Registrar with a prayer to dissolve the Managing Committee and for holding fresh election as the Managing Committee had been reduced to a minority, a copy of which is placed at Annexure-2 to the writ petition. On 22.12.2014 the District Co-operative Officer requested the Secretary, State Election Authority to hold election of the 11 members of the Managing Committee. Since the request by the District Co-operative Officer to hold election of the members of the Managing Committee before the State Election Authority did not include the post of the Chairman, hence the



petitioners moved in revision before the Registrar, Co-operative Society in Revision Case No. 13 of 2015. The matter was heard and the orders were reserved on 05.5.2015 and on 19.5.2015 vide order present at Annexure-6 that the revision petition was disposed of by the Registrar Co-operative Societies finding no fault in the request of the District Co-operative Officer present in his letter dated 22.12.2014 whereunder a request had been made for holding election in respect of 11 members of the Managing Committee. On 20.5.2015 vide order bearing Memo No. 978 the District Co-operative Officer in exercise of powers vested under Section 41(5) (b) of 'the Act' appointed Shri Amarendra Kumar, District Co-operative Extension Officer as Administrator for the society. However, in view of the order passed by the Registrar in the revision petition of the petitioners on 19.5.2015 that the order of appointment of an Administrator dated 20.5.2015 was recalled vide order bearing Memo No. 105 dated 04.6.2015. The petitioners being aggrieved are before this Court.

CWJC No. 10440 of 2015 has been filed by the Chairman of the Chand-Pipar PACS, Block- Saraigarh Bhaptiyahi in the district of Supaul being aggrieved by the order bearing Memo No. 546 dated 4.6.2015 issued by the Chief Election Officer, Bihar State Election Authority Act and order bearing Memo No. 734 dated 8.6.2015 passed by the District Co-operative Officer, whereby the elections to the Managing Committee of the society in question has been declared

inter alia on grounds that 7 elected members of the society had resigned. The resignation of the 7 elected members is present at Annexure-2 series to the writ petition.

CWJC No. 11665 of 2015 has been filed by 7 members of Bhaiswan PACS in the district of Patna being aggrieved by the order dated 22.5.2015 / 25.5.2015 of the Additional Registrar, Co-operative Societies, Bihar, Patna in Case No. 423 of 2014 whereby in consideration of the fact that 10 elected members of the society had appeared before the Registrar, Co-operative Societies on 10.3.2015 to submit their resignation and which had reduced the Managing Committee to a minority that it was held superseded until the election of a new Managing Committee and by the same order a direction was issued for appointment of an Administrator.

In CWJC No. 12371 of 2015, the petitioner who is the Chairman of Laheri PACS, has questioned the notification bearing no. 686 dated 7.7.2015 whereunder the election to the Managing Committee of the society has been announced in view of the order dated 10.3.2015 passed in Dispute Case No. 158 of 2015 whereunder the Registrar Co-operative Society has dismissed the revision preferred by the petitioner questioning the order of the District Co-operative Officer dated 06.2.2015 dissolving the society in consideration of the resignation of six elected members of the 10 members Managing Committee of the Society.



CWJC No. 4245 of 2015 has been filed by the Chairman of Shivobahar PACS, Block-Suryapura in the district of Rohtas who has questioned the order dated 27.1.2015 of the District Co-operative Officer whereby he has dissolved the Managing Committee and appointed an Administrator in exercise of powers vested under Section 41(5) of 'the Act'.

CWJC No. 6330 of 2015 has been filed by the Chairman of Mangarpal PACS in the district of Saran at Chapra being aggrieved by the order dated 29.5.2014 passed by the respondent Joint Registrar, Co-operative Society in Miscellaneous Case No. 268 of 2014 / 14 of 2015 as contained in Annxure-5 whereby the Society has been dissolved under Section 41(5) of 'the Act' in view of the fact that six elected members of the 11 members Managing Committee had resigned.

CWJC No. 12455 of 2015 has been filed by the Chairman of the Kanker PACS, District-Aurangabad being aggrieved by the order bearing Memo No. 863 dated 12.12.2015 of the District Co-operative Officer whereby in consideration of the fact that of the 8 members of the Managing Committee, 5 elected members had resigned and thus the society has been reduced to a minority that an Administrator was appointed under Section 41(5) of 'the Act'.

All these writ petitioners are further aggrieved by the notification of the State Election Authority bearing Letter No. 547

dated 04.6.2015 whereunder the election programme for holding the elections to the societies in which the Managing Committee had been dissolved by virtue of resignations of more than half of the members of the society, has been notified.

I have already indicated at the outset that whereas the rest of the writ petitions seek to question the wisdom of the Registrar in ordering for dissolution of the Managing Committee upon resignation of more than half of the members of the Managing Committee in exercise of powers vested under Section 41(5) (b) of 'the Act', CWJC No. 9491 of 2015 has been filed by the aggrieved members of one of such society in whose case no such order had been passed rather the Registrar has merely directed for holding election against the vacant posts of the Managing Committee caused by the resignation of the members.

Since the majority of the writ petitions are on the issue whether an order of dissolution of Managing Committee passed on account of resignation of more than half of the members of the Managing Committee would not ipso facto also result in setting aside the election of such of the members / office bearers of the society who had not resigned while CWJC No. 9491 of 2015 supports such action while questioning a contrary decision taken in the case of the said writ petition, I would be first considering the arguments of the counsel questioning the decision of the Registrar who while dissolving the

Managing Committee on account of resignation of more than half of the elected members has also issued direction for holding election to the entire Managing Committee including post of such of the members / office bearer who had not resigned.

Mr. S.B.K. Manglam, Mr. R.K. Jha, Mr. Sanjay Kumar, Mr. Sanjiv Kumar, Mr. Arun Kumar and Mr. Sajid Salim Khan have appeared for such of the petitioners who are Chairman / members of the respective society and are aggrieved by the decision insofar as the order of dissolution has resulted in setting aside their respective election and consequently are being forced to contest another election by virtue of resignation of more than half of the members of the society.

The sum and substance of the argument of learned counsel questioning the decision of the respondent authorities in relegating even such members / office bearers of the society who had not resigned from their respective posts, to face election is that although the Registrar is vested with the powers of dissolution of a Managing Committee in the circumstances set forth in Clause-a & b of Section 41(5) of 'the Act' but a dissolution of the Managing Committee for the reasons so mentioned would not mean setting aside the election of even those members / office bearers of the Managing Committee who had not resigned. According to the learned counsel appearing for the petitioners even though the Managing Committee would stand



dissolved upon being reduced to a minority, that would not have any impact on the election of the members / office bearers who do not choose to resign and it is only such of the posts which have fallen vacant upon resignation of the members which would have to be thrown open for election in view of the overriding provisions of Section 14(9) of 'the Act' which was amended under Amendment Act 6 of 2013. It is the contention of the learned counsel for the petitioners that if the vacancies occur when the term of the Board is less than half of the original term then the same is to be filled up by nomination and in case the term is more than half then these vacancies are to be filled up through a by-election. Mr. Jha learned counsel appearing on behalf of the petitioners in CWJC No. 11665 of 2015 relying upon a Bench decision of this Court reported in **2009(4) PLJR 1042 Deepak Kumar Jha vs. State of Bihar** has submitted that a Bench of this Court had an occasion to consider a situation where the election to a society had resulted in electing a minority committee which did not constitute a coram. A decision was taken by the Department / State Election Authority to hold fresh election for the entire Managing Committee including the post in which the election had been held and which was questioned by the elected member before this Court. The Bench in consideration of the provision of Rule 21P, 22 and 23 of the Bihar Co-operative Societies Rules framed under 'the Act' and bye-laws 25 and 27 of the Co-operative Credit



Societies in question, was of the opinion that it is only the vacancies remaining which needs to be filled up by fresh election and that the law did not prescribe that even such of the elected members would lose their election if 50 per cent level is not achieved in any election. With reference to the Bench decision in the case of Deepak Kumar Jha (supra) it was sought to be canvassed by Mr. Jha that the attempt of the court would be to give a purposeful construction to the provision which would effectuate the object of the Act and not to negate its intendment. Mr. Jha referring to the 97th constitutional amendment introducing Chapter IX B in the Constitution submits that the importance of the co-operative movement has been recognized and a purposeful interpretation has to be given to the provisions of Section 41(5) read with Section 14(9) of 'the Act'. Mr. Jha referring to the Chapter VI C of 'the Act' submits that special provisions have been incorporated in relation to Primary Agriculture Credit Co-operative Society and Section 44 BF only speaks of supersession. According to Mr. Jha Chapter VI of the Act not only relates to dissolution of a Managing Committee but even the provisions of section 41 reads as such. It was submitted that although the circumstances for inviting order of supersession, suspension and dissolution may be distinctly provided but its effect would be the same. Mr. Jha concluded his argument by referring to the proviso to Section 41(5) of 'the Act' to submit that the proviso itself provides for

restoration of management and which would mean that it is only those vacancies which have occurred due to resignation which has to be put up for election and not those elected members whose membership / office bearers did not resign.

Mr. Manglam taking over the arguments from Mr. Jha submitted that the proviso may be relatable to Section 41(1) of 'the Act' but it would not be applicable in situations arising from Section 41(5). Learned counsel with reference to the definition of the 'Board' provided under Section 2(e), 'member' provided under Section 2(f), 'officers' provided under section 2(g) and 'office bearer' provided under section 2(gg) submits that the 'office bearers' and the 'officers' have been distinctly defined though they form a part of the Managing Committee. According to Mr. Manglam the term of the Board has provided under Section 14(9) 'the Act' as five years and the term of the office bearers and the members of the Board is co-terminus with the term of the Board. He thus submits that even though the consequence of resignation of more than half of the members of the Managing Committee would result in a dissolution of the Managing Committee but that would not ipso facto result in cancellation of election of other elected members / office bearers who have not chosen to resign and whose term would be guided by Section 14(9) of 'the Act' which has an overriding effect over other provisions of 'the Act'. He submits that Section 14(9) of the Act amended vide Act 6 of



2013 begins with a non obstante clause and gives a five years period to all elected members / office bearers of the Board and which cannot be reduced upon resignation of half of the members of the Managing Committee. With reference to the provisions of Section 41(5) of 'the Act' he submits that although clause(a) thereof specifically refers to the office bearers but clause(b) does not make any such reference meaning thereby the status of the office bearers remains unaffected by the resignation of the half of the members of the Managing Committee. He submits that it is to cater to such circumstances that the amendments were made in Section 14(9) of 'the Act' to provide for election to the vacancies so caused where the term of the Board remained more than half of the original term and in other cases to fill up the vacancies caused, by nomination.

In support of his submission, learned counsel has relied upon the following decisions:

- (i) *AIR 1952 SC 324 (Shamrao vs. the District Magistrate)*
; paragraph-12
- (ii) *(2008) 3 SCC 279 (New India Assurance Co. Ltd. vs. Nusli Neville Wadia)*
- (iii) *AIR 1950 Privy Council 81 (Ram Kissendas vs. Satya Charan)*
- (iv) *AIR 1959 SC 422 (Veluswami vs. Raja Nainar)*
- (v) *(2008) 9 SCC 648 (Durgesh Sharma vs. Jayashree);*
paragraph-55 and 57
- (vi) *(2011) 5 SCC 729; paragraph-52*

Mr. Sanjay Kumar and Mr. Sajid Salim Khan have also argued on the same lines and their submissions would only bear repetition of the arguments already noted above.

Mr. Sanjeev Kumar appearing in CWJC No. 12455 of 2015 has submitted that even when an order for appointment of Administrator has been passed under Section 41(5) of 'the Act' but no order of dissolution has been passed.

The arguments questioning the decision of the statutory authorities of dissolution and the decision of the State Election Authority to hold election for the entire Managing Committee has been contested by Mr. Ishwari Singh appearing for the petitioner in CWJC No. 9491 of 2015 and Mr. Yogendra Mishra appearing for the private respondents in CWJC No. 11665 of 2015 and Mr. Madhuresh Prasad appearing for the private respondents in CWJC No. 6330 of 2015 as well as counsel for the State and the State Election Authority.

Mr. Ishwari Singh leading the argument has submitted that Section 41(5) of 'the Act' explains the circumstances in which the Managing Committee can be dissolved and the resignation by more than half of the members is one such condition found at clause (b) of the provision. He submits that the moment a Managing Committee is dissolved it means that the life has been taken out of the Managing Committee and nothing survives. According to Mr. Singh even if some of the office bearers may not have resigned but the consequences of dissolution would effect their posts as well. Mr. Singh, with reference to the writ petitioners so represented by him, submits that where the Managing Committee itself stood dissolved by



the resignation of more than half of the members of the Managing Committee, there was no scope to direct for holding of election in respect of only such of the vacancies which had been caused by resignation and not for the entire committee. Referring to orders placed at Annexure-9 of the writ petition it was contended that whereas in other similar placed cases the order of dissolution was passed and even in the present case an Administrator had been appointed by the District Co-operative Officer under Section 41(5)(b) of the Act vide Annexure-7 but the said order was recalled subsequently on 04.6.2015 in the light of the order passed by the Registrar disposing of the revision application of the petitioners on 19.5.2015 impugned at Annexure-6 to the writ petition. He submits that the word 'dissolution' by itself means wiping out the life of the Committee as a whole and could only lead to a fresh election of the entire committee. Contesting the arguments of the petitioners in relying upon Section 14(9) of 'the Act' to save the elected members and chairman who had not resigned, it was submitted that Section 14(9) would not have any such impact where the identity of the Managing Committee itself gets wiped out. With reference to the judgment of a Single Judge rendered in CWJC No. 8286 of 2011 (Vimal Shukla) placed at Annexure-4, he submits that the learned Single Judge while interpreting Section 41(5) of 'the Act' had upheld the decision of the Registrar to dissolve the Managing Committee and



appoint an Administrator where 7 members out of 12 members of Managing Committee had resigned. He submits that the judgment of the learned Single Judge was affirmed by the Division Bench in LPA No. 1422 of 2012. Referring to a Division Bench judgment of this Court reported in **1971 BRLJ 117** he submits that the word 'dissolution' has been explained.

Mr. Yogendra Mishra while opposing the writ petitioners in CWJC No. 11665 of 2015 submits that Section 14(9) of the Act was a consequence of the 97th Amendment to the Constitution. Referring to Article 243 ZJ he submits that the term of the members and office bearers of the Board is co-terminus with the term of the board and it is only where any casual vacancy arises and the term of the Board is less than half that the same is to be filled up by nomination while in other casual vacancies occurring where the term of the Board exceeds half of the original term, it has to be filled up by a by-election. He submits that the provision of Section 14(9) of 'the Act' has been framed to fill up the casual vacancies occurring during the existence of the Managing Committee but not where the very identity of the Managing Committee is wiped out under an order of dissolution passed under Section 41(5) (b) of 'the Act'. With reference to the provisions of Section 41 he submits that the provisions relating to the issue of dissolution is in two parts and Section 41(1) to Section 41(4) of 'the Act' relates to circumstances where the functioning of the society is



affected due to mal functioning of the Managing Committee warranting an order of suspension / supersession at the discretion of the Registrar. He submits that on the other hand Section 41(5) of 'the Act' is in distinct circumstances where half of the members of the Managing Committee choose to resign from the Managing Committee thus reducing it to a minority. He submits that the moment a majority of the members of the Managing Committee resign, there is no option for the Registrar but to dissolve the Managing Committee. Mr. Mishra, referring to a decision of this Court reported in **AIR 1990 Patna 6 (Vaidya Singh vs. State)** has submitted that it was held that where the Co-operative Societies is silent on any issue then an answer to the circumstances can be searched under the Representation of People Act. He submits that just as a dissolution of parliament leads to a fresh election, the same would follow also in the present case and no sooner a Managing Committee is dissolved, whether or not any elected member or office bearer remain to resign, he would also face dissolution. Learned counsel has referred to a decision of the Supreme Court reported in **AIR 2003 SC 87:(2002) 8 SCC 237** which is a matter arising out of presidential reference in the Gujarat Assembly Election matter and with particular reference to paragraph- 53 and 54 of the judgment he submits that the term dissolution has been explained to mean bringing to an end any legislative body. He submits that Section 14(9) of 'the Act' is a provision merely to cater

to casual vacancies and where the vacancies would exceed half, the only consequence is dissolution.

Learned counsel for the State have supported the impugned action in the light of the statutory provisions.

Mr. Bindhyachal Rai, learned counsel with reference to the proviso to Section 41(5) of 'the Act' submits that the moment the provision refers to constitution of a new Managing Committee, it would mean a new Managing Committee as a whole.

Mr. Madhuresh Prasad appearing for the private respondent in CWJC No. 6330 of 2015 has supported the decision of the State Election Authority to go in for fresh election and relying upon the judgment in Gujarat Assembly case (supra) he submits that there is no room for any confusion.

I have heard learned counsel for the parties and I have perused the materials on record. I have already discussed the issue at the outset and although extensive arguments have been advanced by counsel supporting and opposing the impugned action, the only issue which would fall for consideration before this Court is whether despite a dissolution taking place under Section 41(5) of the Act by virtue of the circumstances discussed therein, any elected post of a member or an office bearer of the Managing Committee, who does not choose to resign, gets saved. The second issue which falls for consideration is whether the provision of Section 14(9) of 'the Act' as

amended in 2013 would come to the rescue of such of the members / office bearers who though come within the mischief of dissolution but since they have not chosen to resign, a dissolution would not affect their respective elections.

The members and the office bearers of a Managing Committee owe their existence to the term of the Managing Committee as is manifest from Article 243ZJ (2) of the Constitution of India as well under Section 14(9) of 'the Act'. The provision very eloquently provides that the term of the members and office bearers of the Board shall be co-terminus with the Board meaning thereby that the term of the members / office bearers of the Managing Committee would be five years or until the existence of the Board. To avoid any confusion, I would clarify that the term 'Board' as defined under Section 2(e) of 'the Act' means the Board of Directors or the Governing Body or the Managing Committee of a Co-operative Society. The substantive provisions of Section 14(9) of 'the Act' provides that the term of the elected members / office bearers of the Board would be five years and shall be co-terminus with the term of the Board which by itself conceives of an eventuality where the term of the Board may be curtailed for reasons explained under Section 41 of 'the Act'. The reasons can be due to 'supersession' or 'dissolution' but the effect is the same and the Managing Committee gets wiped out and so ends the term of the members / officer bearers constituting



the Managing Committee. Although in my opinion, Clause-(a) and (b) of Section 41(5) of 'the Act' have no different connotation and clause(a) which provides for an eventuality resulting from resignation of the majority of members / office bearers of the Managing Committee is fully catered to by the eventuality present at clause (b) but in either of the situation the result is the same and a dissolution of the Managing Committee would take in its fold even those elected members / office bearers of a Managing Committee who have not chosen to resign. Though the argument of learned counsel appearing for the petitioners in relying upon the second proviso to Section 14 (9) of the Act to save the election of the members / office bearers who do not choose to resign but are made to face dissolution by reason of vacancy caused by resignation of more than half of the members of the Managing Committee or for other reasons appears very attractive and appropriately reasonable but I am afraid that is not the legislative intendment reflected from the statutory provisions of Section 41(5) of 'the Act' which gives no such indication nor does the provisions relating to dissolution proceeds to save the election of any of such member / office bearer of the society. On the contrary the proviso to Section 41(5) of 'the Act' very clearly speaks about a constitution of 'newly elected Managing Committee' and which would obviously include the post of the office bearers as well as the members of the Managing Committee who do not choose to resign. The Supreme



Court in Gujarat Assemble case (supra) at paragraph-53 of the judgment has explained the distinction between the term ‘dissolution’ and ‘prorogation’ to mean that whereas dissolution brings a legislative body to an end and terminates its life, ‘prorogation’ on the other hand, only ends a session unless it is co-incident with the end of a legislative term. It is explained that ‘prorogation’ unlike ‘dissolution’ does not affect the life of the legislative body which may continue until it is brought to an end by dissolution. Section 41 of the Act elaborates the circumstances where the term of the Managing Committee of a society can be curtailed. The provision falls under Chapter VI which rightly reads as ‘Dissolution of Managing Committee’. Section 41(1) to 41(4) of ‘the Act’ confers discretionary power on the Registrar to curtail the term of an elected Managing Committee where the Managing Committee of a society has been making persistent defaults or has been negligent towards its duty or has worked against the interest of the society or has brought about a stalemate in the functioning of the committee and when the Registrar has been empowered to order for supersession of the society as well as to disqualify the elected members from contesting any election for next five years. Similarly Section 41(5) of the Act empowers the Registrar to order for dissolution of a Managing Committee where it has been reduced to a minority either due to resignation of majority of members and office bearers or due to vacancies caused by any reason



whatsoever. The statutory provisions though vests discretion in the Registrar to dissolve a Managing Committee of a society in such circumstances by use of the word 'may' but in my opinion, the effect of the word 'may' in the present context would have to be interpreted as 'shall' for no sooner that a Managing Committee is reduced to a minority there is hardly any option available to the Registrar but to dissolve the society and the moment an order of dissolution is passed, it ends the life of the Managing Committee and takes into fold even such of the members and office bearers who have not chosen to resign. Any other interpretation to the provision would be reading into the provision and supplying 'Casus omissus'

Mr. Jha while relying upon the judgment of this Court in Deepak Kumar Jha (supra) came very near in drawing analogy therefrom but in my opinion the judgment relied upon was in circumstances where a Committee was yet to be constituted due to the numbers falling below the coram and when this Court held that it is only the vacant posts which needs an election and not the entire committee but insofar as the present case is concerned the effect of dissolution is wiping out the committee as a whole.

Although in some of the cases there have been arguments regarding no formal order of dissolution having been passed but in my opinion that is only a technicality for the moment more than half of the members of the society have resigned, the dissolution becomes

automatic and the order passed by the Registrar is only a completion of such formality.



Before parting on the subject, I cannot restrain myself in observing that in some of the cases it is within months of constitution of the Managing Committee, that resignations have followed resulting in dissolution of the Managing Committee. I would wonder whether this mechanism would subserve the laudable object envisaged in the Co-operative movement. If a mere resignation of half of the members would result in dissolution of a Managing Committee, its life would always be at a threat and would be kept at tenterhooks by members with vested interest and the reasons may not realistically be for the well being of the society. When Chapter IX was incorporated in the Constitution under the 97th Amendment it was with a laudable object of promoting the Co-operative movement and for its democratic functioning at the grass root level. In my opinion, whereas clause (a) of Section 41(5) of 'the Act' may be a circumstance leading to a dissolution but clause (b) is a handle in the hands of the disgruntled members of the Managing Committee to be used the moment the functioning of the Committee is not to their liking and the reasons may again not be strictly in the interest of the Cooperative.

These observations are for consideration by the State Government to ponder over the issue and take remedial measures to ensure that the life and term of a Managing Committee is not held

ransom with a group of persons with vested interest.

In view of the discussions on the issue so contested and for the reasons aforementioned CWJC No. 10440 of 2015, CWJC No. 11665 of 2015, CWJC No. 12371 of 2015, CWJC No. 4245 of 2015, CWJC No. 6330 of 2015 and CWJC No. 12455 of 2015 are dismissed.

Let notice be issued to respondent nos. 5 and 6 in CWJC No. 9491 of 2015 for which requisites under ordinary course as well as registered cover with A/D be filed within one week, failing which the application shall stand dismissed without further reference to the Bench.

Put up CWJC No. 9491 of 2015 after service of notice / appearance of the private respondents whichever is earlier under the heading 'For orders' for fixing the date of hearing in the admission matter.

(Jyoti Saran, J)

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