IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1792 of 2016

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1. The Nawada Central Cooperative Bank Limited, Nawada through its Chairman Dr. Laxmi Narayan Singh.
2. Dr. Laxmi Narayan Singh, Son of Late Ramautar Singh, Resident of Village - Baijnathpur, P.S. - Sitamarhi, District - Nawada, at present Chairman of the Board of Directors of Nawada Central Co-operative Bank Limited, Nawada.

.... Petitioner/s

Versus

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

…. ….. Respondent 1st Party

3. National Bank for Agriculture and Rural Development, through the Chief General Manager, Mauryalok Complex, P.S. - Kotwali, District - Patna.
4. Reserve Bank of India through its Regional Director, South Gandhi Maidan, Patna.

…. ….. Respondent 2nd Party

5. Union of India, Ministry of Finance (Banking Division) through its Director, New Delhi.
6. Shree Bikram Kumar Jha, present Managing Director of Nawada Central Cooperative Bank, Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra
		Mr. Arvind Kumar Jha
For the Respondent-State	:	Mr. Anjani Kumar, AAG-6
		Mr. Sanjay Pd., AC to AAG-6
For the Union of India	:	Mr. Awadesh Kumar Pandey, SCGC
		Mr. Ravinder Kumar Sharma, CGC
For the Respondent-RBI	:	Mr. Kaushal Kumar Jha
For the Respondent-NABARD	:	Mr. Sanjit Kumar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-02-2016

Heard Mr. Yogendra Mishra, learned counsel appearing for the petitioners, counsel for the Union of India, counsel for the State, counsel for the NABARD and counsel for the Reserve Bank of India.

The writ petition was initially filed praying for issuance of appropriate writ/order/direction commanding the respondents herein to enforce the provisions of section 44BI of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') as well as Clause No.7.4(iv) of the Memorandum of Understanding. The petitioners have also prayed for quashing the notification bearing no.464 dated 28.1.2014 impugned at Annexure-3/1, whereby the respondent no.6 has been transferred as the Managing Director, Nawada Central Cooperative Bank Limited, Nawada as well as notification bearing no.1661 dated 3.2.2014 impugned at Annexure-3 whereby the respondent no.6 has assumed charge of the office. The said notification dated 28.1.2014 has been placed on record through I.A. No.944 of 2016 vide Annexure 3/1.

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

The argument of Mr. Mishra has centered around the amendment incorporating Chapter-VI-D in 'the Act' vide Amendment Act 18 of 2008. According to Mr. Mishra since after incorporation of Chapter-VI-D to 'the Act', the affairs of short term credit cooperative society inclusive of the financing bank would have to be governed within the frame work of the memorandum of understanding and the intrusion by the State Government thereafter stands ceased. With reference to section 44-BI (1) of 'the Act' he submits that whereas section 44-BI (1) mandates that the members of the Managing Committee or the Chief Executive Officer of the State Cooperative Bank or Central Co-operative Bank are to fulfill such criteria as may be stipulated by the Reserve Bank of India, even if a power is vested in the Registrar to remove such persons who are found ineligible or are found wanting on qualifications, this power was exercisable only during the transitional period when Chapter-VI-D was introduced in 'the Act' vide Amendment Act 18 of 2008 and not thereafter. According to Mr. Mishra, even if section 14(3) of 'the Act' vests jurisdiction in the State Government to post a Chief Executive Officer in the cooperative societies, this power stood ceased no sooner Chapter-VI-D was introduced in 'the Act' and whereafter it is the society exclusively which is to govern its affairs. According to Mr. Mishra it was only at the transitional stage that if a situation arose where the incumbent to the post i.e. the Chief Executive Officer was not holding the prescribed criteria, that the Registrar could pass order for his removal in consultation with the Reserve Bank of India or the National Bank but not thereafter. According to Mr. Mishra, the provision was a one-time exercise to be taken by the Registrar at the enforcement of Amendment Act 18 of 2008 but not thereafter. It is on the strength of such interpretation that Mr. Mishra argued that not only the posting order by the State Government in respect of respondent no.6 impugned at Annexure 3/1 of the interlocutory application is without sanction of law but even the assumption of charge and section 14(3) of ‘the Act’ would not come to the aid of the State Government to issue such order which is invalid from its inception. He submits that by virtue of the Chapter-VI-D, any posting of the Chief Executive Officer in a short term cooperative credit structure by the State Government is illegal and since no such jurisdiction continues to exist in the Registrar, for removal hence the writ petition is the only remedy available to the petitioner. According to Mr. Mishra, the private respondent is not holding the prescribed qualification for such posting and in view of the legal position so explained, the jurisdiction would exclusively lie in the High Court. He further submits that the judgment of this Court reported in **2015(1) PLJR 639 (Manoj Kumar Singh vs. The State of Bihar)** does not answer the issue posed.

The argument of Mr. Mishra has been contested by learned counsel appearing for the respondents relying upon the Bench decision of this Court rendered in the case of **Manoj Kumar Singh Vs. State of Bihar** (supra).

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

That the petitioner-Bank is a registered cooperative society is not in dispute. Once this position is clear the petitioner cannot escape the regulation as prescribed under ‘the Act’. There is nothing in Chapter-VI-D or in the objects or reasons of the Bihar

Amendment Act 18 of 2008 which ousts the applicability of other provisions of 'the Act'. There is again no such provision present in Chapter-VI-D itself which restricts the jurisdiction of the State Government to post any officer as the Managing Director or Executive Officer or in similar position to be the Chief Executive of a registered cooperative society who under sub-section (i) of section 14(3) would exercise general control over the administration of the registered society and inter alia convene meetings of the Managing Committee. The legal position in this context stands discussed in the case of **Manoj Kumar Singh** (supra) and I do not intend thus, to delve deep into the matter. The power vested in the State is wholesome and does not get restricted in any manner by the incorporation of Chapter-VI-D, to read anything different.

The legal position that statutory power is vested in the State to post an Executive Officer in the cooperative societies is self eloquent and section 44-BI (2) enables the Registrar to remove any such officer, if he does not fulfill the eligibility criteria but such removal can take place only on receipt of advice from the Reserve Bank of India or the National Bank. The petitioner apparently seeks to bypass the lawful procedure.

The objection raised by the petitioner society to the transfer and posting of the respondent no.6 on the anvil of ineligibility, the remedy is provided in section 44-BI of 'the Act'. In fact the petitioners were much conscious of the legal position when they filed the writ petition and had thus restricted their relief for enforcement of the provisions of section 44-BI of 'the Act. It is even after praying for such relief and being caught on the book foot of having not availed of the remedy before the Registrar that they sought to question the power of the State Government of posting, appointment and intrusion in the deliberation of the registered cooperative societies which argument is dehors the scheme and object of 'the Act.

Whereas section 14(3) of 'the Act' vests jurisdiction in the State Government to post a Chief Executive in the registered cooperative society, the eligibility and removal of such Chief Executive in so far as short term Credit cooperative structure is concerned can be found in section 44-BI of 'the Act' and sub-section (2) thereof empowers the Registrar to remove the Chief Executive Officer if found ineligible to hold the post upon receipt of advice from Reserve Bank of India or the National Bank. The argument of Mr. Mishra that such exercise by the Registrar was a one-time exercise cannot be upheld for the provision does not reflect any restrictive conforment. In view of such express provisions provided under section 44-BI of 'the Act, in my opinion, the petitioners were initially correct in maintaining the writ petition with a prayer to direct the respondent-State more particularly the

Registrar, Cooperative Societies to enforce section 44-BI of 'the Act' while testing the eligibility of the private respondent. The petitioners interestingly have not withdrawn this prayer but yet question the authority of the State Government to post and that of the Registrar to order for removal. The forum for raising such grievance is provided under 'the Act' and the petitioners shall be at liberty to exhaust the same. Obviously if the private respondent does not fulfill the eligibility criteria as alleged by the petitioners and his posting requires a modification for such reason, then ample power is vested in the Registrar but until such time that any such opinion is expressed by the Registrar on the issue in tune with the statutory obligations, the posting order cannot be interfered with.

I thus find no reasons to grant indulgence to the prayer made by the petitioners.

For the reasons explained the writ petition is dismissed. The interlocutory application, if any, stands disposed of.

(Jyoti Saran, J)

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