IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10545 of 2011

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Patna Circle State Bank Employees Co-operative Credit & Thrift Society Ltd. (A Society registered under Bihar and Orissa Cooperative Societies Act), having its registered office at Room No-216, Second Floor, Ashoka Place, Exhibition Road, Patna-800001, through its Honorary Secretary, Gautam Kumar Sinha, s/o-late Panchu Gopal Sinha

.... Petitioner

Versus

1. The State Bank of India through the Chairman, Corporate Office, Madam Cama Road, Mumbai
2. The General Manager, State Bank of India, local Head Office, West Gandhi Maidan, Patna.
3. The Chief Manager, State Bank of India, Judges Court Road, Patna-800001
4. The Deputy General Manager-cum-Circle Development Officer, State Bank of India , local Head Office ,West Gandhi Maidan, Patna
5. The Assisstant General Manager (Administration), Administrative Office, State Bank of India, J.C. Road, Patna.
6. The Branch Manager, State Bank of India, J.C. Road Branch, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Amaresh Kumar Sinha, Adv.
For the Respondent State : Mr. Kaushlendra Kumar Sinha, Adv.
For the Bank of India : Mr. Sunil Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 09-08-2016

I.A. No. 4513 of 2011

This Interlocutory Application has been filed for amendment of the writ petition by incorporating the following prayer, with supporting statements and submissions -

"i) That a writ in the nature of a writ of mandamus or any other appropriate writ order or direction be issued, commanding the respondent bank for reviving the current accounts and fixed deposit accounts which have been unilaterally and arbitrarily closed by the bank without specifying any clear or cogent reason.

ii) A writ in the nature of mandamus or any other appropriate writ be issued, directing the bank to continue the STDRs which have been prematurely terminated by the bank after levying the penal deduction of one percent (1%) causing immense loss to the petitioner society for their full term,

iii) A writ in the nature of mandamus or any other writ or order or direction be issued, directing the bank to pay compensation to the petitioner society for arbitrarily and prematurely liquidating the STDRs without any request by or consent of the petitioner society."

2. Having regard to the nature of the prayer, I.A. 4513 of 2011 stands allowed and is treated as forming part of the main writ petition.

C.W.J.C. No. 10545 of 2011

This writ petition has been filed for quashing the letter bearing letter No. Gen/29 dated 25.4.2011 (Annexure-13) issued by the Chief Manager, State Bank of India, Judges Court Road, Patna (hereinafter referred to as the 'Bank'), whereby the respondent Bank has threatened closure of the account of the petitioner Society maintained with it, and has disallowed transactions in the account.

2. The brief facts of the case according to the petitioner are that the petitioner is a co-operative society, registered under the Bihar and Orissa Co-operative Societies Act, 1935. The Bank issued a

circular on 5.8.1975 informing its branches in the State of Bihar about the petitioner, directing them to make monthly deductions of loan installments etc. from the monthly pay and allowances of the members of the petitioner society posted at the various branches/offices under Rule 42 of the Bihar Cooperative Societies Rules 1959. The deductions were regularly made from the accounts of the members for and the arrangement continued without any hitch upto the year 2003. For the first time by letter dated 19.8.2003 (Annexure-3), the Bank required the petitioner society to delete the words 'State Bank of India'/'SBI' from its name as such use of the name was in violation of Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (for short "the Emblems Act"). Upon failure to do so, the Bank would be at liberty to initiate legal action against the petitioner. Similarly, a letter dated 11.8.2008 (Annexure-5) was issued by the Bank, followed by its legal notice dated 26.10.2008, and on each occasion the petitioner resisted the demand of the Bank in terms of its letters dated 27.8.2003, 27.8.2008 and 31.10.2008 respectively. Thereafter, by its letter dated 27.11.2009, the Bank raised a new issue that the staff posted at some of the branches were collecting large deposits from the public in favour of the petitioner Society and this posed a potential risk to the Bank's image and reputation. The petitioner was required to confirm that it was not accepting deposits from the general public. The petitioner on its part sought to allay the apprehensions of the Bank, stating that funds were raised strictly in accordance with Rule

40 of Bihar Cooperative Societies Rules, 1959. Considering the petitioner's non-compliance of its directives, the Bank by its letter dated 26.8.2010 (Annexure-11) proposed the following actions against the petitioner:

> *"i) To request the Registrar of Co-operative Societies to initiate appropriate action against your Society.*
> *ii) To file civil suit against your Society.*
> *iii) To close your Current Account and Fixed Deposits Account maintained with our bank branches. As such, you are requested to surrender the unused cheques leaves immediately and not to use the cheque leaves for further withdrawals. Also please advise your members who have already been issued cheques by you not to present the cheques drawn on these accounts for clearing after 15(fifteen) days to avoid inconvenience. Please call on the branch after 15 days to collect the proceeds of these accounts".*

3. In view of continued resistance from the petitioner, the Bank then issued a letter dated 25.4.2011 informing the petitioner that the local Head Office had instructed it to not allow transactions in the petitioner's account. The Bank accordingly prohibited the use of the cheque leaves earlier issued to the petitioner and these were now required to be surrendered. Such decision of the Bank culminated in its impugned letters dated 25.4.2011 (Annexure-13) and 25.5.2011 (Annexure-17) by which it informed the petitioner of having closed the petitioner's O.D. accounts and also its deposit accounts.

4. Learned counsel for the petitioner, Mr. Amaresh Kumar Sinha, assails the action of the Bank at various levels. To begin with, he points out that the petitioner had had regular transactions with the

Bank for almost three decades prior to the letter dated 19.8.2003 issued by the Bank, and no such objection had ever been made in the past. It is also stated that the petitioner has been subjected to hostile discrimination as there are 70 similar Societies functioning outside Bihar and 12 such Societies within Bihar and Jharkhand against whom no action of this nature has been taken and who continued to operate their accounts and make transactions with the State Bank of India as before. Significantly, it has been pointed out that even Respondent nos. 2 to 6 who are various officials of the Respondent Bank are themselves members of similar Co-operative Society which has been permitted to continue operating its bank accounts.

5. Learned counsel for the petitioner next refers to the relevant provisions of the Emblems Act to submit that the petitioner has not acted in violation thereof. As per Section 3 of the Emblems Act which is being relied upon by the Bank, use of any name or emblem specified in the Schedule is subject to previous permission of the Central Government or an Officer authorized by it. Violation of this provision attracts penalty under Section 5 subject to previous sanction of the Central Government before institution of prosecution. If the Bank held the view that the petitioner had violated the provisions of the Emblems Act, it ought to have approached the concerned authority under the said Act rather than assuming the role of the Co-operative Registrar as well as the Central Government and taking a unilateral decision against the petitioner.

6. Reference is also made to Section 4 of the said Act under which the competent authority is prohibited from registering any name of a company, firm or other body of persons which is based on any name or emblem in contravention of Section 3. It is pointed out that in the instant case, the competent authority, being the Registrar of Co-operative Societies, had granted registration as far back as in the year 1973, and as such any action for deletion of the name or even for institution of penalty/prosecution could be done only at the instance of such competent authority. The Bank had however not approached the competent authority for any such action against the petitioner.

7. It is further submitted that according to the Rules governing the Bank, term deposits may be prematurely encashed at the request of a depositor subject to deduction of one percent (1%) from the rate of interest applicable. The Rules do not further imbue the Bank with any authority to make repayment of a deposit prior to its maturity at will, much less make a deduction of one percent (1%) from the applicable rate of interest.

8. In the instant case, the Bank has closed the petitioner deposit account prematurely and made a deduction of one percent (1%) from the applicable rate of interest, causing a considerable loss, to the petitioner, quantified by it at about Rs. 2,41,25,985/-.

9. Learned counsel for the Bank, Mr. Kaushlendra Kumar Sinha, appears and has been heard. He reiterates the stand of the Bank to the effect that the petitioner has violated the provisions of Section 3

of the Emblems Act in including the Bank's name in its own name, despite repeated directives to desist from doing so. In view of the petitioner's recalcitrant attitude, the Bank was left with no option but to close the accounts of the petitioner.

10. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the writ petition. As rightly contended on behalf of the petitioner, the Respondent Bank could not have assumed the role of the competent authority to take a unilateral view that the petitioner had violated the provisions of the Emblems Act. It is clear from the Bank's letter dated 26.8.2010 (Annexure-11) that it was mindful of the procedure to be adopted under the Emblems Act by approaching the Registrar of Co-operative Societies to initiate appropriate action or by filing a civil suit against the petitioner, neither of which was however done. On the other hand, the Bank has failed to disclose the source of statutory power or any authority on the basis of which it has taken direct action against the petitioner by closing its accounts. The specific submissions of the petitioner with regard to other similarly situated Societies not having been proceeded against, apart from the petitioner's own accounts with other branches of the State Bank of India not having been closed, have not been controverted by the Bank. The Bank has also failed to satisfy this Court with reference to its authority to terminate the petitioner's TDR accounts before maturity and to deduct one percent (1%) from the applicable rate of interest resulting in considerable loss suffered

by the petitioner.

11. In the above circumstances, the impugned order dated 25.4.2011 (Annexure-13) and the order dated 25.5.2011 (Annexure-17) are hereby quashed. The petitioner shall be at liberty to approach the Bank for quantification of the loss which has resulted by reason of deduction of one percent (1%) from the applicable rate of interest for the period during which the term deposits had run. If any such representation is filed by the petitioner within a period of two weeks from today, the same shall be considered and disposed of by the Bank in accordance with law within a period of four weeks thereafter. If the petitioner is found to have suffered loss on account of such premature termination of the term deposits, such amount shall be paid to the petitioner within a period of two months from the date of such quantification.

12. The writ application stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

S.Ali/B.T.

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.08.2016
Transmission Date	N/A.