IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4270 of 2017

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Ali Reza, Son of Md. Sharif Hussain, Resident of Village and P.O. Gaiyari, P.S. Araria, District- Araria, presently Chairman of the District Central Co-operative Bank, Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Co-operative Department, Government of Bihar, Patna.
3. The Registrar, Cooperative Societies, Bihar, Patna.
4. The Joint Registrar, Cooperative Societies, Purnea Division, Purnea.
5. The District Cooperative Officer, Araria, District- Araria.
6. The Managing Director, District Central Cooperative Bank Ltd., Purnea.
7. Hira Prasad Singh, Son of Yogendra Narain Singh. Resident of Village and P.O. Nirpur, P.S. Dhamdaha, District- Purnea.
8. Dr. Shiv Narayan Yadav, Son of Late Ram Lal Singh Yadav, Resident of Village and P.O. Madho Nagar, P.S. Bhawanipur, District- Purnea.
9. Ramchandra Prasad Singh, Son of Asharfi Prasad Singh, Resident of Village- Dhangadha, P.O. Simarbani, P.S. Bhargama, District- Araria.
10. The State Election Authority, Bihar Patna through the Secretary.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. S. B. K. Mangalam, Advocate
For the State	:	Mr. Krishna Kumar Singh, AC to GP 22
For the Respondent No. 7	:	Mr. Aditya Narain Singh with
		Mr. Kundan Kumar Sinha, Advocates
For the Respondent No. 8	:	Mr. Satyendra Nr. Singh-I, Advocate
For the Respondent No. 9	:	Mr. Banwari Sharma with
		Mr. Shiv Kumar, Advocates
For the Respondent No. 10	:	Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-06-2017

Heard Mr. S. B. K. Mangalam, learned counsel for the petitioner; Mr. Krishna Kumar Singh, learned A.C. to G.P. 22 for the

State; Mr. Rakesh Kumar Jha, learned counsel for the Managing Director, Purnea District Central Co-operative Bank Limited (hereinafter referred to as the 'Bank'); Mr. Aditya Narain Singh, learned counsel for the respondent no. 7 and Mr. Mukesh Kumar, learned counsel for the respondent no. 10.

2. The present writ application has been filed seeking the following reliefs:

> *"I. For issuance of an appropriate writ in the nature of* ***CERTIORARI*** *for quashing the order dated 15.12.2016/10.03.2017 passed by the Respondent no. 3 in Review Petition Case No. 389 of 2016 and analogous cases issued under memo no. 217/RL dated 10.03.2017, whereby and where under the Respondent no. 3 has been pleased to declare the petitioner defaulter to contest the election for the post of Chairman of Managing Committee of the District Central Co-operative Bank, Purnea and has, therefore, rejected the nomination of the petitioner and has declared the Respondent no. 7 as the duly elected Chairman of the said Bank.*
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> *II. For a declaration that if the election petition filed by the Respondents no. 7 and 8 being Election Petition Nos. 4 of 2013 and 18 of 2013 was already dismissed by the Respondent no. 3 vide his order dated 10.05.2016 and 28.06.2016 issued under memo no. 523/RL dated 30.06.2016,*

the Respondent no. 3 had no jurisdiction to pass a different order reviewing his earlier order dated 10.05.2016/28.06.2016 and, therefore, the order dated 15.12.2016/10.03.2017 is not only illegal but also without jurisdiction.

III. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

3. The petitioner was the duly elected Chairman of the Bank pursuant to elections held on 27.11.2012. Thereafter, the respondents no. 7 and 8 filed election dispute cases before the Registrar, Co-operative Societies being Election Dispute Cases No. 4/13 and 18/13 respectively. After the matter having been admitted and heard, final order was passed on 10.05.2016/28.06.2016 by which the election cases were dismissed. Subsequent thereto, the respondents no. 7 and 8 jointly filed Review Petition Case No. 389 of 2016 before the Registrar resulting in passing of the order dated 15.12.2016/10.03.2017 by which the nomination of the petitioner has been rejected and the respondent no. 7 has been declared elected, being the runner up. The petitioner has impugned the said order in the present writ application.

4. Learned counsel for the petitioner submitted that initially there were two election petitions filed and thereafter the

review being filed jointly by the respondents no. 7 and 8 was not maintainable and deserved to be rejected on that ground itself as the proceedings are governed by the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') which stipulates that separate petitions are required to be filed relating to separate original proceedings. Learned counsel submitted that even on merits, both in law as well as on facts, the order impugned is unsustainable. He submitted that the Registrar has decided the issue relating to disqualification of the petitioner on the day of filing of nomination without adjudicating the same and only relying on a report submitted by the Managing Director of the Bank dated 05.09.2013, which is impermissible. He submitted that such finding of default against the petitioner could only have been given in a duly constituted separate proceeding for such purpose and depending on the verdict, an election petition could have been maintained. Learned counsel submitted that a co-ordinate Bench of this Court has categorically held that considering the nature of allegation, the election petition itself was not maintainable for it raises an electoral dispute while seeking an answer on disqualification of membership and thus the election petitioner was knocking a wrong forum for the nature of grievance and the order passed by which the petitioner of the said writ petition was held disqualified by the Registrar was set aside. For such proposition, he relied on the judgment and order of a co-ordinate Bench of this Court in the case of **Ram Dhyan Yadav vs. The State of Bihar & Ors. (C.W.J.C. No. 10137 of 2015)** dated 08.02.2016 and **Shiv Shankar Mahton vs. The State of Bihar & Ors. (C.W.J.C. No. 7948 of 2015)** dated 29.02.2016. Learned counsel submitted that from the discussion made in the order impugned, the sole ground for interfering is that the two reports received by the Registrar dated 15.07.2015 and 05.09.2013, the earlier order by which the election petitions were dismissed not having considered the earlier report dated 05.09.2013 showing the petitioner as defaulter, and his election has been set aside by the order impugned on the ground of improper acceptance of his nomination as he has been held to be a defaulter. Learned counsel submitted that the records would indicate that the letter dated 05.09.2013 which has been referred in the impugned order was available on record at the time of considering the election petition and in fact by order dated 25.08.2014 in Election Petition Case No. 18 of 2013, it was ordered that the copy of the same along with all its annexures running into 58 pages were to be served on the respondent no. 8 and thus the review petition based on such document was not maintainable as once an order has been passed having considered any particular document, re-appraisal or change of opinion relating to the same document is impermissible in law in an application seeking review of the original order. Learned counsel submitted that the grounds available for review under the Code do not envisage re-hearing of the matter based on materials which were already before the Court concerned and under the guise of seeking review as such point can only be pressed in an appeal and not in a petition for review. Learned counsel further submitted that it would be clear from the penultimate paragraph of the order impugned (which is the last paragraph at internal page no. 2 of the order) where it is accepted that there were two reports and only on the ground that the first report was not considered and a second report was considered while dismissing the election petitions, in review, the Registrar has re-appraised the materials and has re-considered the issue and taking a u-turn has allowed the election petition unseating the petitioner. Learned counsel submitted that equally glaring is the fact that the Registrar has also committed grave irregularity by preponing the date fixed in the case not only behind the back of the petitioner but also without giving notice of the same to him and in fact on the prepond date, the matter was heard by the Registrar only in the presence of the respondents no. 7 and 8 and order was reserved with the only grace to the petitioner that he was permitted to submit his written arguments. Learned counsel submitted that on the petition filed by the respondents no. 7 and 8 on 05.12.2016 praying for preponing of the date fixed for 07.02.2017 there is an endorsement which only states "Put up on 15.12.2016". He submitted that neither any order has been recorded preponing the date to 15.12.2016 nor is there any indication as to whether the entire matter was to be put up and heard on 15.12.2016 and only the petition filed for preponing the date was to be put up. Learned counsel further submitted that even the notice about such issue being considered on 15.12.2016 was neither issued to the petitioner nor he was made aware of the same from any quarter. Learned counsel submitted that upon coming to know of the matter having been heard and order reserved, he filed written submission on 19.12.2016 in which he has taken a categorical stand about the date being preponed and hearing made on 15.12.2016 which was neither the date initially fixed nor even subsequently communicated to him. Learned counsel drew the attention of the Court to the fact that initially the 'No Dues Certificate' issued in favour of the petitioner by the Bank was held to be valid and based upon the same the election dispute cases were dismissed by order dated 10.05.2016/28.06.2016. It was submitted that the said issue having been considered once and held in favour of the petitioner, the impugned order taking an opposite view, based on existing materials, is clearly beyond jurisdiction and thus requires to be interfered with. Learned counsel contended that though he is not required to submit on merits relating to whether the petitioner was a defaulter but still he could convince the Court that the petitioner was not a defaulter on the basis of admitted materials on record. He submitted that the entire controversy arises due to the fact that prior to 2008, there was a PACS by the name of *Gayari Sisouna*. However, in the year 2008, the same was bifurcated into *Gayari* PACS and *Rampur Kodarkatti* PACS and the amount shown outstanding against the petitioner was the original amount, common to both the newly created PACS, and after bifurcation the authorities did not bother to look into the fact that the dues had to be bifurcated both against *Gayari* PACS as well as *Rampur Kodarkatti* PACS. It was submitted that the Senior Audit Officer, Co-operative Societies, Purnea in his report dated 12.02.2013 has considered in detail the entire factual aspect and the dues of the petitioner in the background of the fact that *Gayari Sisouna* PACS having been bifurcated subsequently in the year 2008, the dues, upon such bifurcation between the two newly formed PACS fastened the liability of an amount which was not only fully paid by the petitioner prior to the date of his nomination but in fact Rs. 2634/- was excess payment made which was to be refunded to the petitioner. Learned counsel submitted that this fact of payment of amount and bifurcation is not denied by the parties. Further, he pointed out that the very approach of the authority has been erroneous for the reason that the petitioner has been shown as representing both *Gayari* and *Rampur Kodarkatti* PACS which is also admitted by the respondents no. 7 and 8 in their election petitions where they have stated that the petitioner represented *Gayari* PACS and *Rampur Kodarkatti* PACS which is totally erroneous as one person cannot be the representative of two PACS and thus impliedly the respondents no. 7 and 8 are also aware of the fact that the petitioner, being entitled to represent only one PACS, was representing *Gayari* PACS but they have not been able to show as to what was the dues against *Gayari* PACS upon apportionment of the dues between *Gayari* PACS and *Rampur Kodarkatti* PACS. Learned counsel further submitted that even the said controversy relating to the petitioner not having paid his dues is unfounded for the reason that upon depositing the money, the petitioner had got a proper receipt and once the said receipt is not challenged and nobody comes up to complain that the money deposited by him has wrongly been shown as deposited by the petitioner, the *bona fide* of the petitioner cannot be questioned.

5. Learned counsel for the respondent no. 7 opposed the writ petition by raising a preliminary objection of the petitioner not coming to the Court with clean hands. He submitted that the

letter dated 05.09.2013 which was not considered by the Registrar initially while dismissing the election petition and which was the basis for passing the impugned order has deliberately not been brought on record by the petitioner and thus him not having disclosed all the facts, the same amounting to suppression of material facts from the Court, the writ petition should be dismissed. For such proposition, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **K. D. Sharma v. SAIL** reported as **(2008) 12 Supreme Court Cases 481**, the relevant being at paragraphs no. 34 to 38. He further submitted that the order impugned is sustainable in law as it comes within the scope of review given to the authority, the same being on the ground that the facts which were earlier not considered and not brought to the notice of the authority, is a good ground for reviewing any order. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in the case of **State of W. B. v. Kamal Sengupta** reported as **(2008) 8 Supreme Court Cases 612**, the relevant being at paragraphs no. 29 to 35. Learned counsel submitted that the petitioner had managed to obtain a 'No Dues Certificate' which was found to be issued by a person who was not competent to issue the 'No Dues Certificate' and later on it has been found that the petitioner was also defaulter. Learned counsel also drew the attention of the Court to the show cause issued to the person who had issued the 'No Dues Certificate' to the petitioner in which he has been called upon to explain as to how the 'No Dues Certificate' has been issued when there were dues shown against the PACS represented by the petitioner.

6. Learned A.C. to G.P. 22 for the State submitted that, in view of materials on record and the position in law, Mr. Indra Kant Yadav had the authority to issue 'No Dues Certificate'.

7. Learned counsel for the Bank submitted that in the impugned order the Registrar has specifically mentioned that the order under review was passed taking note of the second report dated 15.07.2015 which gave a clean-chit to the petitioner whereas the previous report dated 05.09.2013 was against him but the fact is that the first order dismissing the election petition was not based of any of these two reports. Learned counsel also relied upon the abovereferred two decisions of a co-ordinate Bench of this Court in the case of **Ram Dhyan Yadav** (supra) and **Shiv Shankar Mahton** (supra) wherein it has been held that in an election petition, the question of defaulter cannot be decided by the Registrar and the same has to be independently and separately contested in a separate proceeding prior to the matter being decided in the election suit. Thus, he submitted that the issue of the petitioner being defaulter having been gone into by the Registrar while deciding the election

petition cannot be sustained in the eyes of law and accordingly, learned counsel submitted that he may not be required to go into the factual aspect as to whether the petitioner was a defaulter or not on the date of election. Learned counsel further submitted that at the very first initial stage the Registrar, by order dated 30.07.2013, had called for the entire records relating to the case and a report was also called from the District Magistrate-cum- District Election Officer, Co-operative Societies, Purnea. It was submitted that the procedure is totally alien to law inasmuch as the election petition has to be judged on the basis of materials to be produced by the election petitioner and the Court, only upon either request from the parties or after the case having been admitted, coming to a finding that any report or document was required, can do the same, but in the present case the same being done *suo motu* on the very first day itself has set in motion the course of the election petition in a wrong direction, which is against the provisions of law. Learned counsel submitted that from the pleadings of the main election petition filed by the respondents no. 7 and 8, there is admission that there are two separate PACS by the name of *Gayari Sisouna* and *Rampur Kodarkatti* PACS but it has been stated that the petitioner represented both of them and therefore he is a defaulter. Thus, he submitted that the very presumption that one person can represent two PACS is clearly erroneous and the election petitioners before the Registrar have themselves tacitly accepted this but both these two, i.e., *Gayari Sisouna* and *Rampur Kodarkatti* PACS together are being sought to be shown represented by the petitioner though the petitioner represents only *Gayari* PACS. Learned counsel drew the attention of the Court to a letter written by the then Managing Director of the Bank under Memo No. 772 dated 05.09.2013, which is the sole document relied upon by the election petitioners and the Registrar while passing the impugned order to show that the petitioner was defaulter on the date of election wherein it has been stated that against the *Gayari* PACS there was principal loan amount of Rs. 1,069,41/- and interest Rs. 26,569/-. He submitted that from the original loan register, copy of which has been brought on record in the counter affidavit filed on behalf of respondent no. 7, it would be clear that the said dues were of the then undivided *Gayari Sisouna* PACS. He submitted that after division of *Gayari Sisouna* PACS, the G*ayari* PACS which is represented by the petitioner was liable to pay 62% of the original dues which comes to Rs. 84,000/-, approximately whereas the petitioner had paid about Rs. 99,000/- prior to the date of nomination. Learned counsel further submitted that the controversy with regard to the petitioner having deposited Rs. 20,000/- cash in the Bank on 05.11.2012 cannot be disputed by the Bank for the reason that a regular receipt has been given to him dated 05.11.2012 with regard to the said Rs. 20,000/- and the contention of the then Managing Director that the money deposited by some other person has been shown to have been deposited by the petitioner stands falsified as no such person has ever come forward to claim that though he had paid a higher amount but he has been given a receipt for lesser amount. Learned counsel also drew the attention of the Court to a report by the Senior Audit Officer, Co-operative Societies, Purnea dated 12.02.2013, copy of which has been brought on record in the supplementary counter affidavit filed on behalf of the petitioner to show that the *Gayari* PACS which the petitioner represents had paid Rs. 2,634/- extra under the head of interest which was refundable and thus there cannot be any question of him being a defaulter on the date of nomination. Learned counsel submitted that the said report was again put to test before the Joint Registrar, Co-operative Societies, Purnea Division and he has also committed the same mistake by not taking note of the fact that *Gayari Sisouna* PACS in the year 2008 stood bifurcated into two PACS and the amount which has been shown relates to the figure prior to such bifurcation which was never shown in the account of the succeeding PACS which has been explained in the report of the Senior Audit Officer, Co-operative Societies, Purnea dated

12.02.2013 in which, after division, it has been found that the PACS of the petitioner had paid Rs. 2,634/- extra, which was refundable. Learned counsel at this stage submitted and took a categorical stand that the communication of the Managing Director of the Bank contained in his letter no. 285 dated 07.07.2015, copy of which has been made Annexure P-15 to the writ application, is correct, which is a detailed and considered communication to the Registrar, Co-operative Societies and gives a clean-chit to the petitioner. Learned counsel further submitted that as an officer of the Court he has also gone through the materials and come to an independent finding that the petitioner was not a defaulter on the date of his nomination.

8. Having considered the matter, before the Court proceeds to ultimately decide the issue, it deems fit to clarify the position. The order impugned is in two parts, the first relating to holding the petitioner disqualified and thus removed and the second with regard to the respondent no. 7 being declared elected as the second runner up. By order dated 30.03.2017, this Court has already set aside the direction to declare the respondent no. 7 as elected. Accordingly, the said issue stands concluded. Pursuant to the said order, the respondents no. 7, 8 and 9 preferred L.P.A. No. 622 of 2017 (Hira Prasad Singh & Ors. vs. The State of Bihar & Ors.) which was disposed off by a Division Bench of this Court by order

dated 24.04.2017 without interfering in the matter. The Court has perused the order as well as the main petition. From the same, it transpires that the challenge was only to part of the order dated 30.03.2017 by which the Court had granted *ad interim* stay of the impugned order to the extent the nomination of the petitioner had been rejected. Thus, the issue of the direction to declare the respondent no. 7 having been set aside by this Court by order dated 30.03.2017 not having been challenged or interfered has attained finality and the Court is not required to go into the same. In view thereof, the Court is only considering the question with regard to the nomination paper of the petitioner having been rejected by the impugned order.

9. The Court is unable to sustain the order impugned. First and foremost, the scope of review is limited and governed by Section 114 read with Order 47 Rule 1 of the Code. The said provision has been dealt in detail by the Hon'ble Supreme Court in the case of **State of W.B.** (supra) which has also been relied upon by learned counsel for the respondent no. 7. Paragraph 35 of the same being relevant is quoted hereinbelow:

> *"35. The principles which can be culled out from the abovenoted judgments are:*
>
> *(i) The power of the Tribunal to review its order/decision under Section 22(3) (f)*

of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22 (3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22 (3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring

the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

10. Clause (viii) thereof clearly states that mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier. In the present case, the order dated 25.08.2014 in Election Dispute Cases clearly indicates that copy of letter dated 05.09.2013 along with all supporting documents running into 58 pages was directed to be served on learned counsel for the respondents no. 7 and 8. The said order having been recorded and there being no averment that the respondents no. 7 and 8 were not aware of such order, clearly implies that they were aware of the letter dated 05.09.2013. Once they were aware of such letter being on record, it was their duty to make submissions and rely upon and refer to the same, if they so desired at the time of final hearing. Thus, it

can be reasonably and safely presumed that the respondents no. 7 and 8 were aware of the letter dated 05.09.2013 and so it cannot be said that the Registrar had passed the original order dismissing the election dispute cases without considering the same. It is another matter that the same was not relied upon. The same would require the respondents no. 7 and 8 to file an appeal against the order if in their view the letter dated 05.09.2013 was wrongly not relied upon. Further, the Registrar while dismissing the cases initially had also recorded that the person who had given the 'No Dues Certificate' had been duly and validly authorized to issue such 'No Dues Certificate' and thus on both counts, when the Registrar had initially decided the matter on merit, by the impugned order, the Registrar subsequently taking a contrary view on that very issue which was specifically decided and held in favour of the petitioner and later on holding the same against the petitioner, cannot be justified, while exercising review jurisdiction by the Registrar. At this stage, the controversy whether the person who issued the 'No Dues Certificate' to the petitioner on 12.11.2012 was competent though being academic, has to be held in favour of the petitioner both in view of the authorization given to him to issue 'No Dues Certificate' and also in view of the language of the show cause issued to the person issuing the 'No Dues Certificate', which is only with regard to the fact that when there were dues shown against the petitioner's PACS why he was issued a 'No Dues Certificate' but not as to why 'No Dues Certificate' was issued when the officer had no authority to issue the same. Even learned counsel for the Bank has stated that the officer who issued the 'No Dues Certificate' was competent to issue the same on the said day i.e., 12.11.2012. In view of the authorization given under order dated 12.10.2012 by the Managing Director of the Purnea District Central Co-operative Bank Limited (hereinafter referred to as the 'Bank'), the Branch Managers/ Branch In-charges had been given power to issue 'No Dues' and because at that point of time all persons who were either Branch Manager or Branch In-charge have only been named in the order dated 12.10.2012 which relates to 19 branches of the Bank, the same read with the authorization given in favour of Mr. Indra Kant Yadav under Memo No. 967 dated 29.10.2012 by which he was made the Branch In-charge with power to discharge the work of the branch of the Bank and Mr. Swaraj Gupta was directed to perform the work of Assistant, the order dated 12.10.2012 automatically took into its ambit authorization to all Branch Managers/Branch In-charges to issue 'No Dues Certificate'. As far as question of the petitioner having suppressed material facts is concerned, the submission of learned counsel for the petitioner that he was never given a copy of the said letter stands substantiated from the records of the case where the order itself shows that the copy was directed to be handed over to learned counsel for the respondents no. 7 and 8 only and not to the petitioner. Moreover, the same cannot be said to be suppression of fact for the reason that the letter dated 05.09.2013 is the very basis of passing the order impugned and has also been referred in the said order and thus once the said order itself is impugned and on record, a document mentioned therein, even if not physically on record, is clearly in the knowledge of the parties and before the Court and thus cannot be said to have been deliberately suppressed by the petitioner. Thus, the objection of learned counsel for the respondent no. 7 that the petitioner has not come to the Court with clean hands is clearly not established.

11. The contention of the private respondents that the person who issued the 'No Dues Certificate' was not authorized to issue the same, besides being controverted by learned counsel for the Bank, which is the authority to issue such authorization, is also contrary to the general authorization given to the Branch Managers/ Branch In-charges to issue such certificate and once the person who has issued the certificate was the Branch In-charge on 12.11.2012 when the certificate was issued, no infirmity can be said to exist with regard to him issuing the said 'No Dues Certificate'.

Further, even from the showing of respondent no. 7 itself the show cause issued to the person issuing the ‘No Dues Certificate’ was only as to why when there were dues, the said ‘No Dues Certificate’ was issued but the show cause never mentioned as to why the ‘No Dues Certificate’ was issued when the person was not authorized to issue the same.

12. Coming to another vital aspect of the matter, upon perusing the records, the Court finds that neither any order is recorded on 05.12.2016 by the Registrar preponing the date to 05.12.2016 nor any notice has been issued to the petitioner informing him of such preponment. This fact has also been verified by learned State Counsel who admitted that there was no such notice or order recorded. This ground itself would be sufficient for interfering in the order. Further, the Registrar, by taking a contrary view to what had been held in the earlier order of rejection has clearly exceeded his jurisdiction as far as the power of review is concerned. Moreover, the Court is in agreement with the submissions of learned counsel for the petitioner that neither the Registrar could have gone into the issue of the petitioner being defaulter as it was beyond the scope of the election petition nor is there any discussion or finding to this effect recorded, which renders the order impugned totally unsustainable in the eyes of law. The

order impugned is based purely on surmises and on the inconsequential issue that instead of considering the initial letter dated 05.09.2013 which was against the petitioner, reliance has been placed on a later communication dated 15.07.2015. The Court is surprised as to how the said issue was relevant in the election petition when both the letters are of a much later date to the date on which the petitioner filed his nomination and election held. Even if the issue of defaulter had to be considered, the same was required to be considered in a separate duly constituted proceeding for such declaration and could not have been gone into collaterally in an election dispute case as has been done by the Registrar. The Court is in agreement with the view of the co-ordinate Bench in the cases of **Ram Dhyan Yadav** (supra) and **Shiv Shankar Mahton** (supra) on this point.

13. At this stage, learned counsel for the respondent no. 7 submitted that since the term of the Managing Committee of the Bank is to expire in November, 2017 i.e., after a few months, at least it should be ensured that the elections are held on time.

14. As a result, in the background of discussions made hereinabove, the remaining part of the impugned order by which the nomination of the petitioner has been rejected also stands set aside. It goes without saying that as and when elections become due the same

shall be held in accordance with law. The entire records which had been called for by the Court and were in the custody of learned State Counsel be returned from where the same had been received.

15. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
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