

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9949 of 2016

Along with

Interlocutory Application No. 933 of 2017

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Dr. Laxmi Narayan Singh, son of Late Ramautar Singh, resident of Village-
Bajinathpur, 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.
3. Bihar State Election Authority through the Chief Election Officer, Bihar, Patna.
4. Reserve Bank of India through its Regional Director, South Gandhi Maidan,
Patna- 800001.
5. Bihar State Co-operative Bank Limited, Ashok Rajpath, Patna through its
Managing Director.
6. Shri P.K. Sinha, the then Managing Director-cum-Ex-Officio Member of the
Bihar State Co-operative Bank Limited, Ashok Rajpath, Patna.
7. Shri Ramesh Kumar Choubey, Elected so called Chairman of the incomplete
Managing Committee of Bihar State Co-operative Bank Ltd., Patna.
8. Shri Jitendra Kumar, Member of the Said incomplete Managing Committee
father's name not known.
9. Shri Manoj Kumar Singh, Member of the said incomplete Managing
Committee, father's name not known.
10. Shri Mahesh Rai, father's name not known, Member of the said incomplete
Managing Committee.
11. Shri Nagendra Kumar, father's name not known, Member of the said incomplete
Managing Committee.
12. Vijay Vatsain, Member of the said incomplete Managing Committee, father's
name not known.
13. Bishundeo Rai, Member of the said incomplete Managing Committee, father's
name not known.

SI. Nos. 8 to 13 are so called elected Directors of the incomplete Managing
Committee of the Bihar State Co-operative Bank Ltd., Patna.

.... Respondent/s



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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Advocate Mr. Arvind Kumar Jha, Advocate Mr. Uma Kant Tiwary, Advocate
For the State	:	Mr. Md. Nadim Saraj, GP-5 Mr. Shailesh Kumar, AC to GP-5
For the Respondent Bank	:	Mr. Rakesh Kr. Jha, Advocate
For the respondent no. 7	:	Mr. Y. V. Giri, Sr. Advocate Mr. Ishwari Singh, Advocate
For the B.S.E.A	:	Mr. Mukesh Kumar, Advocate
For the Respondent no. 12	:	Mr. Chakrapani, Advocate
For the Respondent no. 13	:	Mr. Raja Ram Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-08-2017

Heard learned counsel for the petitioner; State; State Election Authority; respondent no. 5; respondent no. 7; respondent no. 13 and respondent no. 12.

2. The petitioner has moved the Court for the following reliefs:

“i) An appropriate writ, order or direction quashing the order dated 21.4.2016/2.5.2016 as contained in Memo No. 368/RL dated 3.5.2016 passed by respondent no. 2 in Miscellaneous Case No. 11 of 2013 as contained in Annexure-5, be issued.

ii) An appropriate writ, order or direction declaring the Managing Committee consisting of respondent 2nd Party as incomplete and not eligible to manage the affairs of respondent-Bank, be issued.

iii) An appropriate writ, order or direction commanding the respondent 2nd Party to forbear from managing the affairs of the respondent-Bank, be issued.”

3. The controversy relates to election held to the Managing Committee of the Bihar State Co-operative Bank Limited



(hereinafter referred to as the 'Bank') held in January, 2013 in which only six persons were elected to the Managing Committee as Directors out of a total vacancy of thirteen. The petitioner also was a contestant and did not win the election. The challenge is that in terms of the proviso to sub Rule (2) of Rule 22 of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the 'Rules'), the constitution of the Managing Committee shall not be treated as complete unless and until the elected members together with the *ex-officio* members, if any, constitute 50 % or more of the Managing Committee. In the present case, the total number of members of the Managing Committee being 17, in terms of the aforesaid Rule, at least nine persons would enable constitution of the Managing Committee. The matter was brought before the Registrar, Co-operative Societies and by the impugned order, the objection has been rejected.

4. Learned counsel for the petitioner submitted that the Managing Committee of the Bank not having been constituted in the eyes of law, they could not have functioned and taken decisions, much less in financial matters. It was submitted that even the order passed by the Registrar is illegal, for the reason that he himself was the Government nominee to the Managing Committee and thus, could not have been the judge of his own cause. It was submitted



that later on, co-option by the so called Managing Committee, of three persons is equally bad for such co-option could only have been done by a Managing Committee in the eyes of law and once there was no constitution of the Managing Committee itself, there could not have been any co-option as the same was exclusively in the domain of the Managing Committee, constituted in accordance with law. Learned counsel submitted that the Managing Director of the Bank, who could be considered to be a member of the Managing Committee, was required to be appointed under the fit and proper criteria prescribed by the Reserve Bank of India and would then have been an *ex-officio* member of the Managing Committee as per Clause 45(4) of the bye-laws of the Bank. Learned counsel submitted that the then Managing Director not possessing such fit and proper criteria prescribed by the Reserve Bank of India would not be a member of the Managing Committee and thus, in totality, the Managing Committee consisting only of seven elected persons i.e., six elected members and one elected Chairman, even if the nomination by the Government is taken into consideration, the number would add up to only eight and the Managing Committee would still not stand constituted as the magic number was nine. It was submitted that in terms of Section 44 AT of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'),



special provisions have been made for societies, including the society in question, under Chapter-VI-D of the Act and Section 44AT of the Act provides that it shall have over-riding effect notwithstanding anything contrary or inconsistent contained in any other chapter of the Act or the Bihar Self Supporting Co-operative Societies Act 1996 or rules framed thereunder or bye laws of any registered society. Learned counsel submitted that Section 44AV of the Act provides for autonomy in all financial and internal administrative matters, which includes personnel policy, staffing, recruitment, posting and compensation to staff. It was further submitted that Section 44BI provides for removal of Directors and Chief Executive Officers and members of the Managing Committee or Chief Executive Officer shall fulfill such criteria as may be stipulated by the Reserve Bank of India and a person not fulfilling such criteria for the post is required to be removed by the Registrar. It was further contended that Section 44BP requires that the Registrar shall ensure the implementation of regulatory prescriptions of the Reserve Bank of India in case of State Co-operative Bank and Central Co-operative Banks and such provision has been made notwithstanding anything contained in the Act or Rules made thereunder. It was thus contended that the Managing Director, in any view of the matter, could not be a member of the Managing



Committee of the Bank.

5. Learned counsel for the respondent no. 7 opened the arguments on behalf of the respondents, taking a preliminary objection. He contended that the petitioner is not permitted to raise grievance with regard to the Managing Committee not becoming functional for the reason that he had also participated in the election and only upon being defeated, he has tried to create a bogey. It was submitted that though the bye-laws provide for 17 members of the Managing Committee, out of the 14 persons who were required to be elected, two were required to be from SC or ST, one Backward Caste, one OBC and two women. It was submitted that in the present case, there could not have been any nomination, what to talk of election, from the category of SC or ST, OBC and women. Learned counsel submitted that once the picture was absolutely crystal clear that out of 14 elected members of the Managing Committee, five vacancies of members could not have been filled up by any means, as there was no person available or eligible in the entire electoral college to stand for such post, the petitioner still choosing to contest the election clearly indicates that since he had lost the election, he is trying to put impediment in the functioning of the Managing Committee of the Bank. Learned counsel further submitted that proviso to Section 22 (2) of the Rules has to be interpreted to be



directory and not mandatory, for the reason that unless consequences are provided in the Act, a provision cannot be said to have a binding effect and if there are no consequences provided, the same could only be directory, to be enforced depending on the particular facts and circumstances of the case. For such proposition, he has also drawn the attention of the Court to Clause 53 of the bye-laws which stipulates that 7 members shall form a quorum for a Board's meeting. Learned counsel submitted that coming to merits, the Managing Director, who was holding the post, was duly appointed in exercise of power available to the State Government under Section 14(3) of the Act, which position has also been held by a co-ordinate Bench of this Court in judgment and order dated 12.02.2016 in C.W.J.C. No. 1792 of 2016 in the case of **The Nawada Central Cooperative Bank Limited & Ors. vs. The State Bank of India & Ors.** It was submitted that the present petitioner was petitioner no. 2 in the aforesaid writ petition in which the Court has held that the State Government has power to appoint the Managing Director of the Bank in terms of Section 14(3) of the Act. It was submitted that though the matter is sub-judice before the Letters Patent Bench, only notices have been issued. Learned counsel further submitted that the contention of the petitioner that the Managing Committee will not stand constituted is also not sustainable for the reason that once the



Managing Director and State nominee are appointed, the number becomes nine, which even if it is accepted that 50% is required of the entire strength of the Managing Committee, i.e., 17, having been satisfied, there cannot be any infirmity alleged against such constitution of the Managing Committee of the Bank. Learned counsel submitted that though in terms of Section 41(1)(iv), the Managing Committee can be dissolved if there is stalemate in the constitution or functioning of the Board but the same presupposes that there is a Board/Managing Committee and then only the same can be dissolved. It was submitted that in the present case, only if it is accepted that there was a Managing Committee, there cannot be any question of dissolving the same. He submitted that in the present case, there is also no constitutional breakdown as the elected body is not only functioning but also discharging its duties and its decisions are being regularly ratified by the General Body, and incidentally, the petitioner has also been participating and signing on the resolutions which are being passed, which includes the co-option of three members to the Managing Committee. He further submitted that since a controversy has arisen, it is the 3rd Managing Director, who is holding the post and the second incumbent fulfilled all the criteria prescribed by the Reserve Bank of India and even the present one fulfills the same except being slightly overage, with regard to



which also the Reserve Bank of India has proposed enhancement of the age limit. It was further submitted that the respondent no. 7, who is the elected Chairman, and was directly elected by the electoral college, in effect, the attempt of the petitioner is also to get his election, for all practical purposes, set aside, without such election being in controversy or subject matter of any election petition or even challenged in the present writ petition. He submitted that the petitioner wants to achieve something indirectly which he could not do directly.

6. Learned counsel for the respondents no. 5 and 12, besides adopting the arguments advanced on behalf of respondent no. 7 submitted that the petitioner while claiming the relief in the present writ application has not asked for any consequential relief in the event it is held that the Managing Committee of the Bank was never constituted and thus, not functional. He further contended that if the Court accepts the contention of learned counsel for the petitioner that the Managing Committee till date has not been properly constituted, then in such event the term of the respondent no. 12, who was duly elected to the Managing Committee shall run for a period of five years from the date of such proper constitution in the eyes of law. For such proposition, he has relied upon a judgment of the Hon'ble Supreme Court in the case of **Dinesh Prasad Yadav**



vs. The State of Bihar & Ors. reported as 1995 SCC Supl. (1) 340.

It was their contention that at least on 01.07.2015, when another Managing Director was appointed by the State Government, he was fulfilling the fit and proper criteria stipulated by the Reserve Bank of India for holding such post, and thus, the complaint of the petitioner, which was pending before the Registrar, became infructuous on that day and no order was required to be passed as the so called defect in the constitution stood ratified. It was also contended that if the relief prayed for by the petitioner is allowed, it would, in effect, result in the entire working of the banking system of the Bank to collapse and even the reconstitution would not be possible expeditiously for the reason that the election to the primary level societies are in progress, which in turn would have to elect the middle District Level Societies and then only the election can be held to the Managing Committee of the Bank, which would be against public interest.

7. Having considered the rival contentions, the Court would only express its view that the Registrar, Co-operative Societies, after being nominated by the State Government to the Managing Committee of the Bank could not have heard the matter as he cannot be the judge of his own cause. Once he was a member of the Managing Committee, the validity of which was the subject



matter of the case before him, either he should have transferred the matter to another competent/authorized officer or till someone else was nominated in his place as the Government nominee to the Managing Committee of the Bank, he could not have heard and decided the matter, which he has done. On this short point itself, the order cannot be sustained.

8. Coming to the merits of the case, if the impugned order is set aside and the matter remanded, as much time has passed and also since the Court has heard the matter on merits, it would be expedient that this Court also decides the issues on merit. The contention of the petitioner that the constitution of the Managing Committee can only be said to be completed when the elected members together with the *ex-officio* members, if any, constitute 50% or more of the Managing Committee, the proposition being based on law, does not leave anything to be deciphered. However, in the present case, the issue is not so simple. The fact that the Managing Committee comprises of 17 members, out of which 13 are elected as members and one as Chairman, one person is nominated by the Government, one person is elected from the Directors representing State Level Cooperatives Affiliated to the Bank and one is the Managing Director; out of 13 members to be elected, as per Clause 45 of the bye-laws of the Bank, two should belong to SC or



ST, one to the Backward Caste, one to the OBC and two to women. In the present case, the admitted position is that out of the six posts reserved for the aforesaid categories, only person belonging to Backward Caste was available for such election and the entire electoral college, from which election was to be held, did not have a single number of SC or ST, OBC or women. Thus, in effect, five vacancies of the Managing Committee of the Bank could never have been filled up due to the composition of the electoral college. This resulted in a situation where, though on paper, the total strength of the Board may be 17, but the actual position was that the Board could not have contained more than 12 members. Once, when effectively, due to the stipulation of law, the requirement is that five members belonging to specified categories are to be elected and not even one member is available from those categories, either to participate in the election or stand for any post, perforce, there shall be corresponding deemed reduction in the strength of the Managing Committee, viewed both from the legal as well as the practical aspect so as not to defeat the constitution of the Managing Committee of the Bank itself for that is the prime object and spirit of the statute. There may be a grey area, to the extent that such contingency is neither contemplated nor provision made in the Act, Rules and bye-laws, but the same has to be dealt with in the best



possible manner so that the provisions of the Act, Rules and bye-laws are balanced and not required to be declared *ultra vires* or any interpretation given so as to defeat the object and purpose of holding election to the body. The fact that the petitioner himself stood for election knowing fully well that five seats could not be filled up in any event, is also an indicator that probably the grievances raised by the petitioner in the present writ application may not have been so raised if he was elected as a member. However, the Court would not dwell much on this aspect. The fact that there was a Managing Director appointed by the Government, which proposition has been upheld by a co-ordinate Bench, though the matter may be still sub-judice before the Letters Patent Bench, would take into its ambit the reality that as the Managing Director of the Bank, the post which is solitary, the incumbent, by sheer dint of him or her holding such office, the membership to the Managing Committee being *ex-officio*, he shall be deemed to be a member of the same. In this connection, the Court would only indicate that sub clause 4 of Clause 45 of the bye-laws relating to the composition states about the Managing Director and only it has been written in bracket that it would be '*ex-officio*, to be appointed under fit and proper criteria prescribed by the R.B.I.'. This is only by way of an explanation with regard to the Managing Director but, in the opinion of the Court, the key word is



ex-officio, i.e., by virtue of the post held by the person. In this context, the Court would refer to Section 44BI of the Act which relates to removal of Directors and Chief Executive Officers. It provides that such person shall fulfill the criteria, as may be stipulated by the Reserve Bank of India and further that on receipt of advise to such effect from the Reserve Bank of India or the National Bank, a person who does not fulfill the criteria for the post of Chief Executive Officer or a member of the Committee of the State Cooperative Bank shall be treated as ineligible and be removed by the Registrar. Obviously, such removal presupposes an appointment. Once the appointment is presupposed, it has to be accepted that there is a Managing Director, as in the present case there was a person who was the Managing Director. It is a different matter that if he did not fulfill the fit and proper criteria fixed by the Reserve Bank of India for his appointment, he was liable to be removed on the basis of his ineligibility. Thus, for the limited purpose of the Managing Committee having been constituted and having become workable, the Managing Director, who was duly appointed by the State Government under Section 14(3) of the Act, being a member *ex-officio*, there being no vacancy of such post at the relevant time, the place shall have to be considered as filled up. Moreover, the consequences of the person not fulfilling the fit and proper criteria



would be his removal, upon due recommendation by the Reserve Bank of India and would not automatically be construed as him not being a member of the Managing Committee. In the present case, there being six elected members and one Chairman and there being the Registrar as the nominee of the Government and the Managing Director, the total number would thus come to nine. On that basis, it cannot be held that the Managing Committee did not stand constituted. Though, in the opinion of the Court, in the facts and circumstances of the present case, due to sheer requirement of the occasion, total strength of the Managing Committee, would in law have to be taken as 12 instead of 17 for the reasons discussed above i.e., there not being any chance of filling up of five such positions as no person belonging to such categories was in the electoral college, who could have even stood for the election. Thus, on both grounds, the constitution of the Managing Committee cannot be said to be improper as 50% mark in both contingencies is satisfied. As far as the Managing Director, at the relevant time not fulfilling the fit and proper criteria of the Reserve Bank of India, at the cost of repetition, such issue would relate to him either continuing in office or being removed from the post, but till the time he is holding the post of the Managing Director, the membership being *ex-officio*, in law, he shall be a member of the Managing Committee and he has also to be



counted as such. As has been contended by learned counsel for the respondents that even the present incumbent satisfies all the criteria except that he is slightly overage and further that as per the recommendation of the Reserve Bank of India, he may be within the enhanced age which has now been suggested, the issue is not required to be gone into by this Court in the present proceeding as it has to be sorted out before the appropriate forum in accordance with law.

9. Thus, taking an overall view of the entire matter, though the order impugned is held unsustainable, and thus, set aside, on the ground that the Registrar is not competent to decide the issue, being himself the member of the Managing Committee, the constitution of which was under challenge, the complaint/cause filed by the petitioner itself having been considered on merits, and this Court not finding any illegality, no relief can be granted to the petitioner. The Court makes it clear that it has not expressed its final opinion with regard to the provisions of Rule 22 of the Rules, but has tried to harmoniously balance and read the provisions of the Act, Rules and the bye-laws, which are in context to the particular facts and circumstances of the case at hand and in such background, the present order has been passed. The issue is left open to be considered and decided in an appropriate case in future.



10. For the reasons aforesaid, the Court does not find any merit in the complaint of the petitioner as filed before the Registrar, and accordingly, both, Miscellaneous Case No. 11 of 2013, filed by the petitioner before the Registrar as well as the present writ petition stand dismissed.

11. As the main writ petition itself has been finally dismissed, the Interlocutory Application No. 933 of 2017 filed by the petitioner for impleading the present Managing Director as party respondent by name having become infructuous stands disposed off.

(Ahsanuddin Amanullah, J)

P. Kumar

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