

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16746 of 2015

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1. Daroga Sahni S/o Ramlakhan Sahni.
 2. Shivsagar Sahni, S/o- Bachalal Sahni.
 3. Mohichan Sahni, S/o- Late Shivdhari Sahni.
 4. Om Prakash Sahni S/o- Bainath Sahni.
 5. Paras Paswan S/o- Late Khedan Paswan.
 6. Radhika Devi W/o- Suraji Sahni.
 7. Jiwni Devi W/o Shivpujan Sahni.
 8. Rabri Devi W/o- Ramayan Ram Serial No.- 1 to 8 all residents of village- Shitalpur, P.O.- Mali, P.S.- Sugauli, District- East Champaran, Motihari.
 9. Mohan Yadav S/o- Mohtar Yadav.
 10. Savita Devi W/o-Bhuta Giri Serial No.- 9 & 10 both residents of Village- Biguhiya, P.O.- Mali, P.S.- Sugauli, District- East Champaran.

.... 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, East Champaran, Motihari.
4. Mali Primary Agriculture Credit Co-operative Society Ltd., Mali, in short “Mali PACS” under Sugauli Block, District- East Champaran through its PACS Manager.
5. Chandan Kumar, S/o- Late Jagdish Sahni, Village- Dumri, Tola- Chapra, P.O.- Mali, P.S.- Sugauli, District- East Champaran, Motihari.
6. Chief Election Officer, Bihar State Election Authority, 32, Hardinge Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ishwari Prasad Singh, Advocate
For the State	:	Mr. Sita Ram Yadav, G.P. 16
For the State Election Authority	:	Mr. Mukesh Kumar, Advocate



For the Private Respondent : Mr. Rakesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioners; State; respondent no. 5 and the State Election Authority.

2. The case has been listed under the heading 'For Orders' in terms of the order dated 16.10.2015. However, with consent of the parties, the main writ petition itself has been heard and is being finally disposed off.

3. The petitioners have moved the Court for the following reliefs:

“(i) For quashing the order passed by the District Co-operative Officer, East Champaran, Motihari, issued under Memo No.-892 dated 29.08.2015, contained in Annexure-4 to the writ petition, whereby and whereunder the District Co-operative Officer has rejected the prayer of the petitioners to dissolve the Managing Committee of the society in view of the provisions of Section-41 (5) of the Bihar Co-operative Societies Act, 1935 and has also debarred the petitioners for a period of five (5) years from contesting the election in the managing committee of the society.

(ii) For issuance of a writ in the nature of Mandamus directing/commanding the Respondents not to give effect to the said order.

(iii) For any other relief or reliefs for which the petitioners are entitled for, in the facts and circumstances of the case.”

4. The basic grievance of the petitioners is that by the order passed by the District Co-operative Officer, East Champaran



(respondent no. 3), the petitioners, who were members of the Managing Committee and had resigned have been debarred from standing for any post of the Managing Committee for a period of five years, purportedly under Section 41(1)(iv) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'), which according to them is absolutely without jurisdiction as the condition precedent for exercise of such power did not exist.

5. Learned counsel for the petitioners submitted that the total strength of the Managing Committee of the Society in question is 11, including one Chairman and the petitioners were the 10 elected members of the Managing Committee. It was submitted that they resigned from their post but the District Co-operative Officer instead of dissolving the entire Managing Committee and going in for fresh election has not done the same and only disqualified the petitioners for standing for any election for the next five years. It was submitted that the provisions of Section 41 of the Act under which the order impugned has been issued relates to there being a stalemate in the constitution or functioning of the Board. It was submitted that such is not the position in the present case as the petitioners had resigned and thus, the jurisdiction of the authority to intervene being limited to there being a stalemate in the constitution or functioning of the Board, not being satisfied, any order passed is illegal. Learned



counsel submitted that with regard to the mandatory requirement of the entire Managing Committee being dissolved, in case more than 50% of the elected office bearers resign, has been settled by a Division Bench of this Court in the case of **Indradeo Prasad vs. State of Bihar** reported as **2016(4) PLJR 903**.

6. Learned counsel for the State and respondent no. 5 do not dispute the aforesaid position.

7. Having considered the matter, the Court finds that the exercise of power under Section 41(1)(iv) of the Act by the District Cooperative Officer is erroneous as the conditions precedent for invoking such power are not satisfied in the present case. The resignation of the petitioners can in no way be construed to be a stalemate in the constitution or functioning of the Board. Rather, it was a straight forward case for exercise of power under Section 41(5)(b) of the Act and dissolve the Managing Committee. The view of the Court is fortified by decision of the Division Bench of this Court in the case of **Indradeo Prasad** (supra) to which I was a party. Accordingly, the order impugned dated 29.08.2015 passed by the respondent no. 3 is set aside. The Managing Committee of the Society in question stands dissolved. The State Election Authority is directed to hold election of the office bearers of the Managing Committee of the Society in question expeditiously. It is further held



that the petitioners shall be entitled to contest the election, if otherwise not unsuited.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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