

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10922 of 2016

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1. Raghubansh Narayan Singh, Son of Late Ramphal Singh, resident of village - Vyas Chak (Chak Vyas), P.O. & P.S. Goraul, District – Vaishali.
 2. Shailendra Kumar Pandey, Son of Late Nawal Kishore Pandey, resident of village & P.O. Akhtiyarpur, P.S. Rai Patera, District – Vaishali.
 3. Krishnadeo Singh, Son of Late Satyanarain Singh, resident of village + P.O. Chak Shingar, P.S. Judawanpur, District – Vaishali.
 4. Jagal Paswan, Son of Sri Raghu Paswan, resident of village - Goraul, P.S. Mahua, District – Vaishali.

.... 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. The Vaishali District Central Co-operative Bank Ltd., Hajipur through its Managing Director.
4. The Managing Director, the Vaishali District Central Co-operative Bank Ltd., Hajipur, District – Vaishali.
5. The Board of Directors of the Vaishali District Co-operative Bank Ltd., Hajipur through its Chairman.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Y. V. Giri, Sr. Advocate Mr. Ishwari Singh, Mr. Surendra Kumar Mishra and Mr. Syed Ashafaque Ahmad, Advocates
For the Respondents No. 3 to 5 :	Mr. P. K. Shahi, Sr. Advocate Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-02-2017

Heard learned counsel for the parties.

2. The petitioners have moved the Court seeking the following reliefs:

“ i. For quashing the order dated 10.05.2016/ 07.06.2016 passed by the Registrar, Co-Operative Societies, Bihar Patna in Misc. Dispute Case No. 71 of 2016 contained in Annexure-5 to this writ petition, whereby and



whereunder the Registrar, Co-operative Societies, Bihar, Patna has dismissed the Miscellaneous Dispute Case filed on behalf of the petitioners.

ii. For quashing the illegal decision of the Board of Directors of the Vaishli District Central Co-operative Bank Ltd. Hajipur taken in the meeting held on 18.03.2016 by which it is said that the petitioners have been removed from their respective post of the Board of Directors of the bank.

iii. For calling for and quashing the Extra Ordinary Annual General Meeting of the Bank shown to be held on 08.04.2016, by which decision of the Board of Directors of the Bank dated 18.03.2016 has been ratified.

iv. For quashing the letter date 11.04.2016 of the Managing Director of the Vaishali District Central Co-operative Bank Ltd, Hazipur, whereby the petitioners have been informed that they have been removed from their respective posts of the Directors of the Bank.

v. For issuance of a writ in nature of mandamus commanding the respondents not to give effect to the order of the Board of Directors of the Bank which has been ratified in the Extra Ordinary Annual General meeting of the Bank dated 08.04.2016, whereby and whereunder the petitioners have been removed from their respective posts of the Board of Directors of the Bank.

vi. For any other relief / reliefs for which the petitioners are entitled for in the facts and stances of the case. ”

3. The petitioner no. 1 was elected Vice Chairman of the Vaishali District Central Co-operative Bank Limited, Hajipur (hereinafter referred to as the ‘Bank’) in election held on 27.11.2012. The petitioners no. 2 to 4 were elected as Directors of the Bank in the



election held on the same day. On 16.03.2016, the petitioners are said to have called a press conference in which they have made remarks with regard to the malfunctioning of the Bank and its poor financial position. The said press conference was reported in the daily newspapers in the edition dated 17.03.2016. On the same day, the Managing Director of the Bank under Letter No. 992 convened a Special Meeting of the Board of Directors on 18.03.2016 at 11.00 A.M. On 18.03.2016, a resolution was taken to remove the petitioners as Directors from the Board of Directors of the Bank. By Letter No. 1009 dated 21.03.2016, the Managing Director of the Bank convened an Extraordinary Annual General Body Meeting on 08.04.2016 at 11.30 A.M. On 03.04.2016, the said notice was also published in the daily newspaper. On 06.04.2016, the petitioners moved before the Registrar, Co-operative Societies under Section 48 of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act') praying for quashing of the resolution dated 18.03.2016, by which they were removed from the post of Directors, for setting aside of the resolutions of the Board of Directors from 05.02.2016 and also for postponing the Extraordinary Annual General Body Meeting scheduled for 08.04.2016. Since in the meantime, the General Body also ratified the decision on 08.04.2016, the petitioners moved the Registrar seeking additional relief by praying that the resolution of



the Extraordinary Annual General Meeting dated 08.04.2016 be set aside and also for quashing of the communication contained in Memo No. 34 dated 11.04.2016 of the Managing Director of the Bank by which the petitioners were communicated the decision of their removal. The Registrar dismissed the petition filed by the petitioners by order dated 10.05.2016/07.06.2016, in Misc. Dispute Case No. 71 of 2016, impugned in the present writ application.

4. Learned counsel for the petitioners submitted that the present case is one in which there has been a total mockery of democratic principles as well as violation of the Constitutional safeguard of the petitioners including the principles of natural justice and, thus, the entire action against the petitioners is vitiated in the eyes of law. It was submitted that the facts are quite telling, inasmuch as, on 17.03.2016, the news was published in the newspaper and on the same day, the Managing Director of the Bank issued notice convening the meeting of the Board of Directors of the Bank for the next day i.e., 18.03.2016. Learned counsel submitted that the said convening itself was illegal, for the same could only be convened by the Chairman on the written requisition of not less than six members of the Board, but in the present case, no such requisition was either submitted nor any meeting fixed by the Chairman of the Bank. Learned counsel submitted that even notice for such meeting was



never sent to any of the members of the Board of Directors including the petitioners. It was further contended that even on 18.03.2016, a one-sided resolution removing the petitioners as Directors was taken without there being any notice issued to the petitioners to explain the charges, which themselves were based only on newspaper publication. Learned counsel submitted that even the Extraordinary Annual General Body Meeting was convened without there being any order of the Chairman or convening by the Managing Director, in contravention of provision of the bye-laws of the Bank which required that such meeting can be called only by the Board of Directors, but in the present case, the same was not complied with. Learned counsel submitted that the further requirement of notice to be sent to individual share holders at least 15 days prior to the date of meeting with full agenda, was also not complied with. Learned counsel submitted that a further development has taken place, by which four members have been co-opted by the Board of Directors in place of the petitioners on 30.04.2016 but their appointment itself has been made subject to any decision by the Court. Learned counsel submitted that neither any opportunity was given to the petitioners to explain the charges against them, either by the Board of Directors or even by the General Body. It was submitted that the haste in which action has been taken also reflects bias, prejudice, *mala fide* and



arbitrariness. Learned counsel submitted that the vindictive nature of action is also reflected by the consequent developments by which the Primary Agriculture Credit Co-operative Societies and *Vyapar Mandal Samitis*, which were being represented by the petitioners, have been disaffiliated from the Bank leading to there being no commercial activity, resulting in the members of such Societies, who are poor farmers, having to bear the brunt of adverse consequences. He further submitted that even the communication of the decision to disaffiliate has been sent by the Chairman of the Bank, though as per the norms, such communication has to be made by the Managing Director. It was further pointed out that seven of the existing Directors had also written to the Managing Director of the Bank as well as the Registrar, Co-operative Societies by Letter dated 12.12.2016, against the Chairman of the Board of Directors that meetings are called and they are made to sign without there being any actual agenda fixed or meeting held.

5. Learned counsel for the Bank submitted that the conduct of the petitioners was such that it led to there being damage to the reputation and goodwill of the Bank among the public at large and more particularly, before the customers/consumers. He submitted that the petitioners being members of the Board of Directors were fully aware of the financial status of the Bank which was running in



profit and, thus, giving the public statement, which was widely published in the newspapers that the Bank was on the brink of bankruptcy, was a falsehood stated by them despite them being aware of the reality, which was quite contrary. Learned counsel submitted that it has not been denied by the petitioners that they had given such statement to the press and once such conduct is admitted, the principles of natural justice cannot be said to have been violated for the reason that once the charges have been admitted by the petitioners themselves, no further notice to them was required to explain the same. Learned counsel submitted that the General Body of the Bank, which is the supreme body, and which had elected the petitioners, having ratified the removal, the requirement of law is complete. He further submitted that notice of the Extraordinary Annual General Body Meeting was published in the newspapers and the petitioners could have taken part in the said meeting and explained their position, if they felt that a wrong decision had been taken by the Board of Directors. Learned counsel submitted that the power of the General Body to recall a member, being inherent, has to be deemed to exist even if no specific provision to this effect is available, as it is enshrined in the Constitution itself. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk**



Marketing Federation Limited and Ors. reported as **(2015) 8 SCC**

1, the relevant being at paragraphs no. 16, 24, 44 and 52, which read as under:

“16. The principle of representative democracy is the election of representatives by the people otherwise eligible to cast their vote and the people thus elected, constituting the body for the management of an institution. Thus, in the case of cooperative societies, after the amendment in the Constitution, there has to be a Board of elected representatives, which may be called Board of Directors or Governing Body or a Managing Committee, etc., to which the members entrust the direction and control of the management of the affairs of the society. That representative body selects one among the elected representatives as its Chairman or any other office bearer, as the case may be. Selection is the act of carefully choosing someone as the most suitable to be the leader or office bearer. Thus, there is a lot of difference between election of delegates/representatives to constitute a body and selection of a person by the body from amongst the elected members to be the leader. It is to be borne in mind that the management and control of the society is entrusted to the representative body, viz. the Board of Directors and that the Chairperson elected by the Board of Directors is the Chairperson of the society and not of the Board of Directors.

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24. No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic



functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243-ZT has given a period of one year to frame/reframe the statutes in consonance with Part IX-B and thereafter, i.e., with effect from 12.01.2013, those provisions which are inconsistent with Part IXB, cease to operate.

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44. The provision simply deals with removal for misconduct or persistent default/non-performance. A person with good conduct may still not earn the confidence of the people who selected him to the office. The very concept of cooperation is to work jointly towards the same end. Unless there is cooperativeness among the elected cooperators who constitute the Governing Body for achieving the object for which the society is constituted and for which those representatives are elected by the members entrusting them with the management of affairs of the society, there will be total chaos. Cooperation among the cooperators is the essence of democratic functioning of a cooperative society. If there is no democracy in a cooperative society, it ceases to be a cooperative society as conceived by the Constitution of India under the Ninety- Seventh Amendment.

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52. Now that this Court has declared the law regarding the democratic set-up of a cooperative society and that it is permissible to remove an elected office-bearer through motion of no confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the constitutional mandate, we feel it just and necessary to lay down certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the



competent legislature/authority.

52.1 Having gone through the provisions regarding motion of no confidence in local self-governments, we find that there is no uniformity with regard to the procedure and process regarding motion of no confidence. Some States provide for a protection of two years, some for one year and a few for six months, to the office-bearers in office before moving a motion of no confidence. However, majority of the States provide for two years and a gap of another one year in case one motion of no confidence is defeated. The Bihar Panchayat Raj Act, 2006 provides for a protection of two years and one year; the Bihar Municipal Act, 2007 provides for a protection of two years and one year; the Himachal Pradesh Panchayati Raj Act, 1994 provides for a protection of two years and two years; the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 provides for a protection of two and a half years; the Madhya Pradesh Municipalities Act, 1961 provides for a protection of two years and one year; the Manipur Panchayati Raj Act, 1994 provides for a protection of two years and one year; the Orissa Panchayat Samiti Act, 1959 provides for a protection of two years; the Orissa Grama Panchayats Act, 1964 provides for a protection of two years; the Punjab Panchayati Raj Act, 1994 provides for a protection of two years; the Rajasthan Panchayati Raj Act, 1994 provides for a protection of two years and one year; the Rajasthan Municipalities Act, 2009 provides for a protection of two years and the Uttar Pradesh Panchayati Raj Act, 1947, as followed by Uttarakhand, provides for a protection of two years and one year.

52.2 Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no confidence against an office-bearer shall be moved only after two years of his assumption of office. In case the motion of no



confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting.”

6. Learned counsel also submitted that now there are four co-opted members who had taken the place of the petitioners and without having been made party, the present writ petition is not maintainable.

7. By way of reply, learned counsel for the petitioners submitted that even where there is a provision of No Confidence, the law would strictly require that an information of the proposed action has to be given to the concerned and specific charges have to be mentioned. For such proposition he has relied upon a Division Bench decision of this Court in the case of **Uday Shankar Singh v. State of Bihar** reported as **2003(2) PLJR 123**.

8. Learned counsel submitted that as far as the objection of the co-opters not having been made party is concerned, the same is not required to be done for the reason that the petitioners had moved before the Registrar on 06.04.2016 i.e., much before even the ratification of their removal by the General Body and the co-



option of the other members and further, that in terms of the co-option itself it has been stipulated that such co-option would be subject to the decision of the Court.

9. Having considered the rival contentions, in the considered opinion of the Court, the removal of the petitioners, in the manner in which it has been done, cannot be sustained. Without going into the factual aspect, even on the basis of the admitted position that the petitioners held a press conference on 16.03.2016 and the same was reported on 17.03.2016, a meeting of the Board of Directors being called on that very day for the next day i.e., 18.03.2016 shows an inexplicable haste in the matter. Further, the Court having perused the records which were called for, it does not transpire that the said meeting of the Board of Directors was requisitioned by the Chairman in the manner required under the bye-laws. On a query to the counsel appearing for the Bank, the Court was informed that the records which have been brought are the only records available. The same does not contain any written requisition of at least six members of the Board of Directors or any decision by the Chairman in terms of the relevant provisions of the bye-laws. Further, the same situation exists with regard to convening of the Extraordinary Annual General Body Meeting, which has also been convened by the Managing Director without there being anything on



record to show that it was called in accordance with the provisions of the bye-laws which stipulate that the same has to be done by the Board of Directors. This is one aspect of the matter. The other more important and relevant aspect is the fact that at no stage, the petitioners were ever given any notice to explain their conduct, much less a reasonable opportunity. Even with regard to the letter of the Managing Director dated 17.03.2016, calling for a meeting of the Board of Directors on 18.03.2016, there is nothing on record to show that it was sent or served on any of the members, much less the petitioners. The resolution having been taken by the Board of Directors thus, cannot be sustained. Moreover, the ratification of expulsion was done without any resolution to indicate that an opportunity was given to the petitioners to come and explain their position before the General Body. In law, neither can it be presumed nor taken for granted that the petitioners could have attended the Extraordinary Annual General Body Meeting and could have explained their position/conduct. The onus, initially, lay on the Board of Directors and subsequently, on the General Body, to notice the petitioners to make them aware of the specific charges and then give an opportunity to them to explain such charge.

10. In the present case, from the procedure adopted, a complete go-by has been given to all the settled principles of a



reasonable and fair procedure and there is blatant and flagrant violation of the mandatory principles of natural justice, which has resulted in there being not only denial of justice but also violation of the basic rights of the petitioners of being heard before any adverse decision is taken against them. In the present case, the principle of *audi alteram partem* requiring notice to the petitioners cannot be said to be a mere formality, as was submitted by learned counsel appearing for the Bank that since they have admitted to what they have said in the press conference, no further opportunity was required, is erroneous inasmuch as, such acceptance was neither before the Board of Directors nor before the General Body and further, even if it is assumed that they had admitted the position, they could have explained their conduct or could have taken corrective steps by holding a fresh press conference or steps which may have mitigated the situation. In the present case, the bye-laws provide even for suspension, but the extreme step for removal has been taken at the very first instance. Moreover, in the manner in which it has been done so hurriedly cannot be justified in any view of the matter. On a query made by the Court to the learned counsel for the Bank that if at all, the stand of the Board of Directors that the statement made to the press by the petitioners has led to there being loss of prestige of the Bank and the confidence of the investor having been shaken, what



steps were taken by the Board of Directors of the Bank to offset the ill-effect of such statement by officially issuing press communiqué bringing on record either the audit report or otherwise, the answer was that no steps have been taken. Thus, even if it is assumed, for the sake of argument, that the statement of the petitioners did cause damage to the reputation and goodwill of the Bank, for almost one year, no effective steps having been taken to counter such ill effect also shows that the said ground was taken only for the purpose of justifying the removal of the petitioners from the post of Directors and not out of any genuine or *bona fide* desire to protect the reputation of the Bank.

11. The principles of natural justice cannot be said to be a mere formality as it cannot be presumed by the authorities which have to take action that the delinquent would have come up with a particular explanation and which may not be acceptable. It is the fundamental and basic right of a person not only to be given an opportunity but also a reasonable and effective one, by firstly being made aware of specific charges which are brought against him and then an effective opportunity to explain the same. Only when these basic requirements are fulfilled, the authorities empowered to take action can proceed to do the same. In the present case, there has been absolutely no adherence to any procedure, either in the convening of



the meeting on 18.03.2016 of the Board of Directors or even of the Extraordinary Annual General Body, which having been done by the Managing Director, stand vitiated in law. As far as the judgment in the case of **Vipulbhai M. Chaudhary** (supra) is concerned, the principle inunciated by the Hon'ble Supreme Court, cannot be disputed. However, in the said case, the facts were that the person was removed by a motion of No Confidence. Thus, in the said case, there was a formal motion of No Confidence brought on grounds enumerated in the charges and then action was taken, which is absolutely not the fact in the present case and therefore, the decision of the Hon'ble Supreme Court in the aforesaid case is of no help to the Bank.

12. Thus, taking an overall view in the matter, the order of removal of the petitioners from the post of Directors of the respondent Bank cannot be sustained, either in law or on facts. Accordingly, the same is set aside. All consequential actions taken in furtherance of the resolution dated 18.03.2016 by the Board of Directors and the subsequent resolution of the General Body dated 08.04.2016 being set aside, the co-option of four other members in place of the petitioners is also set aside. The petitioners are held to be Directors of the Bank till such time they are removed in accordance with law. The order impugned of the Registrar dated



10.05.2016/07.06.2016 passed in Misc. Dispute Case No. 71 of 2016
also stands set aside.

13. The writ petition stands allowed in the aforesaid
terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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