IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8559 of 2016

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Dr. Laxmi Narayan Singh, aged about 67 years, son of Late Ramautar Singh at present Chairman of the Board of Directors of Nawada Central Co-operative Bank, Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Co-operative Department, Bihar, Patna.
2. Registrar, Co-operative Societies, Bihar, Patna.
3. Shree Bikram Kumar Jha, present Managing Director of Nawada Central Co-operative Bank, Nawada.
4. Nawada Central Co-operative Bank, Nawada through the Managing Director.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Advocate Mr. Arvind Kumar Jha, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG 3
For the Respondents no.3&4	:	Mr. Purshottam Jha, Advocate.
For the Invervenor	:	Mr. Rakesh Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 08-02-2017

Heard learned counsel for the parties.

The petitioner has challenged the order contained in Memo No. 308 / RL dated 20.04.2016 passed by the respondent no. 2 in Appeal Case No. 46 of 2016.

The petitioner is the elected Chairman of Nawada Central Cooperative Bank Ltd., Nawada (hereinafter referred to as the 'Bank'). In the meeting of the Board of Directors held on 24.05.2016 under Agenda No. 09, a resolution was taken that the Annual General Body meeting be called, for which the Chairman was authorized to fix the date, time and the programme. It was further resolved that a Special General Body meeting be called on 28.06.2015, as was fixed by the Chairman and for which the time, place and the programme be decided by the Managing Director. When no date was fixed by the petitioner in the capacity of Chairman for the Annual General Meeting, the Managing Director under letter no. 447 dated 24.06.2016 wrote to the Chairman, Vice Chairman and members of the Board of Directors stating that the power to fix the date for Special General Body meeting was with the Managing Director and thus, the resolution fixing the date 28.06.2015 for the Special General Body meeting was void. However, he further fixed the date of the Annual General Body meeting for 06.07.2015 and sought their concurrence.

It appears that pursuant to such request, five members of the Board of Directors, on 24.06.2015, sent letter to the Managing Director deferring the date to 13.07.2015 and also conveying that the said decision may be treated as acceptance of the resolution through circulation. In view thereof, the Managing Director by letter no. 495 dated 26.06.2015 has given notice of holding of the Annual General Body meeting on 13.07.2015 at 09.30 A.M and also enclosing the programme of such meeting. In the meantime, the petitioner filed a representation before the Registrar, Cooperative Societies, Bihar, Patna on 10.07.2015, requesting him to stop the meeting proposed to be held on 13.07.2015 and also granted one month time for fixing the next date of meeting. However, no order was passed and the meeting was held as per the agenda and various resolutions were passed, including that of censure against the petitioner as well as passing of No Confidence Motion against him as per agenda 9 (K) and 9 (Kha). The petitioner being aggrieved, again approached the Registrar on 15.07.2015. When no action was taken, he moved this Court in C.W.J.C. No. 14715 of 2015 and the same was disposed off by order dated 23.09.2015 directing the Registrar to dispose off the appeal expeditiously and preferably within four weeks. Pursuant to such direction, Appeal Case No. 46 of 2016 was disposed off by order contained in Memo No. 308/RL dated 20.04.2016, which is impugned herein.

Learned counsel for the petitioner submitted that by the said order the Registrar though has held that the petitioner is not removed from the post of Chairman but with regard to the other decisions in the Annual General Body meeting dated 13.07.2015, he has not interfered with the same. Learned counsel submitted that the meeting itself was patently illegal since it has not been fixed as per the statutory requirement and the bye-laws. It was submitted that even the Managing Director had accepted that it was the Board of Directors which can fix the date and time of the Annual General Body meeting and thus a request was made for holding the meeting on 06.07.2015, but the Board of Directors neither approved the date nor fixed any fresh date. It was submitted that once the law requires a certain procedure to be adopted, violation of the same shall result not only in making the meeting illegal, but also all decisions taken in the said meeting to be void. Learned counsel submitted that as per the provisions of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'), Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the 'Rules') and the bye-laws of the Bank, the fixing of the date for the meeting of the Board of Directors is a prerogative of the Chairman i.e., the petitioner. He submitted that neither any request was ever placed before the Chairman for fixing the date nor such meeting was fixed. He further submitted that in the event the petitioner would have deliberately stalled the meeting, remedy was available to the other members of the Board of Directors, by making requisition to the Registrar, who is authorized in law to fix the date for meeting of the Board of Directors. Learned counsel submitted that in the present case, admittedly, the same has not been done and only a letter has been written by five out of eight members of the Board of Directors to the Managing Director informing that they have fixed the dated 13.07.2015 for the Annual General Body meeting to be held at 09.30 A.M. and the same be treated as a decision of the Board of Directors through circulation. Learned counsel further submitted that such communication by the five Directors cannot be said to be the passing of resolution through circulation since the procedure required has not been followed.

Learned counsel for the State as well as the Bank submitted that the law requires that the date and time for the Annual General Body meeting has to be fixed by the Board of Directors, which in the present case has not been done. However, learned counsel for the Bank submitted that the matter was more of a clash of ego of the petitioner, who is Chairman and the then Managing Director, but now he has been transferred and the Bank is functioning smoothly.

Learned counsel for the applicant of Interlocutory Application No. 4855 of 2016, who is the Vice Chairman of the Bank, has also assisted the Court though the Interlocutory Application has not been formally allowed. He submitted that the petitioner being the Chairman was deliberately trying to stall holding of the Annual General Body meeting as well as the meeting of the Board of Directors and thus five members were forced to fix the date for the meeting and they being in majority, their decision should be accepted as that of Board of Directors. He submitted that once they had communicated such decision to the Managing Director, the holding of the meeting and passing of various resolutions cannot be faulted. However, he also admitted that the resolution against the petitioner with regard to Agenda No. 9(K) and 9 (Kha) could not have been passed in the manner they have been passed and cannot be sustained. Even the learned counsel for the State and the Bank have taken the stand that the Resolution against the petitioner in terms of Agenda No. 9 (K) and 9 (Kha) cannot be sustained.

Having considered the rival contentions, in the considered opinion of the Court, holding of the Annual General Body Meeting on 13.07.2015 cannot be sustained, on the ground of procedural illegality. The law relating to fixing of the date of the meeting and holding of the meeting is fully governed by the provisions of the Act, the Rules and the bye-laws. On concurrent reading of the same, it is clear that the power to fix the date, time and agenda for holding of Annual General Body meeting is that of the Board of Directors. In the present case there is no meeting or resolution of the Board of Directors and what has been shown to the Court is only a letter signed by five members of the Board of Directors communicating to the Managing Director that they have fixed the dated 13.07.2015 and the time as 09.30 A.M. for holding of the Annual General Body meeting which cannot be treated as being the Resolution of the Board passed through circulation. The Court has no hesitation to hold that such stand of the five members of the Board of Directors is totally erroneous and misconceived. Even for passing of a resolution through circulation, the initiation has to be made by the Chairman and before taking a decision, the circulation has to be in a proper and duly constituted file on which each member is required to give his opinion, either in the affirmative or in the negative, and after the file having moved before all the members of the Board of Directors, the majority view can be said to be the decision of the Board of Directors and such a decision shall be the decision through circulation. In any view of the matter, even for a decision by circulation, the circulation should be to all the members, which in the present case has admittedly not been done. If the procedure which has been adopted in the present case is taken to be valid, it would lead to anarchy, inasmuch as, it would entitle some of the members, who may be in majority, to take any decision and just by signing on a letter, communicate it to the Executive Officer for compliance, under the garb of a decision of the Board of Directors. Such procedure, besides being alien to law, is totally illegal.

In the present case, nothing has been brought before the Court to indicate that the matter was placed before the petitioner in the capacity of being the Chairman of the Bank for fixing a date for the meeting of the Board of Directors and that he had refused to do so and further the law provides that even if the Chairman refuses to call the meeting, the same can be called by the members of the Board of Directors making the requisition to the Registrar who is authorized in law to fix the meeting of the Board of Directors. This also has not been done. Besides, even if it could have been assumed that the letter written by five of the Directors is pursuant to a meeting, the letter had to contain the signature of all the members of the Board of Directors in which the others could have written their dissent and then, going by the majority, it could have been said that the Resolution was passed by the majority of the Directors. What has been brought on record is merely a letter signed by five members of the Board of Directors in which they have stated that it should be deemed as passing of the Resolution through circulation. The Court reiterates that the law does not contemplate such passing of a resolution through circulation in the manner it has been done, which is totally illegal. Once the fixing of date of meeting itself was unauthorized, any meeting being held on the date fixed and any decision taken / resolution passed in the said meeting, cannot be sustained.

In view of the discussions hereinabove, the Court having come to the conclusion that the calling of the meeting on 13.07.2015 was without jurisdiction and thus patently illegal, the said decision to call the Annual General Body Meeting on 13.07.2015, is set aside. As a corollary, all consequential actions i.e., holding of the meeting and passing of any resolution therein are nullity in the eyes of law and accordingly, the same are also set aside.

However, as the Court has been made aware that the Annual General Body meeting has not been held for a long time, despite there being the requirement of statute, the petitioner, as Chairman is directed to fix the date of the meeting, which shall not be beyond 31^{st} May, 2017, in accordance with law, keeping in view the fact that the same has to be held within six months of the closing of the financial year, which ends on 31^{st} March, 2017.

The writ petition stands allowed in the aforementioned term.

(Ahsanuddin Amanullah, J)

Prakash/-

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