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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 904 of 2017****Order reserved on 20.09.2017****Order passed on 13.10.2017**

Santosh Singh S/o Shri Gulab Singh, Aged About 46 Years  
R/o Village Madannagar Tah. Pratappur P.S. Pratappur  
District Surajpur (C.G.)

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Collector Surajpur Distt. Surajpur (C.G.)
2. Chief Executive Officer, Zila Panchayat Surajpur, District Surajpur (C.G.)
3. Chief Executive Officer, Janpad Panchayat Pratappur Dist. Surajpur (C.G.)
4. Suresh Kumar S/o Shri Shivnath Singh R/o Village Chadreli Janpad Sadasya Kshetra No. 22, Janpad Panchayat Pratappur Distt. Surajpur (Chhattisgarh)
5. Jagat Lal S/o Shri Rajbali R/o Village Chadreli Janpad Sadasya Kshetra No. 22, Janpad Panchayat Pratappur Distt. Surajpur (Chhattisgarh)
6. Durga Lal S/o Shri Singachand R/o Village Mayapur Janpad Sadasya Kshetra No.7, Janpad Panchayat Pratappur Distt. Surajpur (Chhattisgarh)
7. Sanjiv Shrivastava S/o Late B. P. Shrivastava R/o Village Khorma Janpad Sadasya Kshetra No.9, Janpad Panchayat Pratappur Distt. Surajpur (Chhattisgarh)

**---- Respondents**


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| For Petitioner             | : Shri Bhupendra Singh, Advocate.   |
| For Respondent No.1/State  | : Shri Ashish Surana, Panel Lawyer. |
| For respondents No. 4 to 7 | : Shri V.K. Pandey, Advocate.       |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C A V Order**

(1) The petitioner was initially elected as Vice President of Janpad Panchayat, Pratappur in the year 2015 and, thereafter he was elected as a member of Sahkari Samiti, Jagarnathpur on 03.04.2015 and, thereafter, he was elected as Director of Zila Sahkari Bank, Ambikapur, Branch Pratappur on 02.03.2016 and then he was declared as Vice President of Zila Sahkari Kendriya Bank on 08.03.2016.

(2) 13 members of Janpad Panchayat, Pratappur raised an objection before the Collector, Surajpur for declaring the petitioner disqualified on the post of Vice President. The Collector, Surajpur under Section 25(5) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, (for short 'Adhiniyam, 1993'), by its order dated 6.10.2016, allowed the said applicaion holding that the petitioner is not entitled to continue in the office of Vice President of Janpad Panchayat, Pratappur, as he has been elected as Vice President of Zila Sahkari Kendriya Bank. The petitioner preferred an appeal before the Commissioner, Sarguja, Ambikapur thereagainst, which has also been rejected by the impugned order, against which instant the writ petiton has been filed questioning the same.

(3) Mr. Bhupendra Singh, learned counsel appearing for the petitioner would submit that the impugned order is bad and unsustainable in law. He submits that the order passed by the Collector is void *ab initio*, as no opportunity of hearing is afforded to the petitioner before passing the impugned order. He would further

submits that the post of Vice President and the post of Vice Chairman are different in the Cooperative Society and the petitioner is holding the post of Vice President and not Vice Chairman as contemplated under Section 25(5) of the Adhiniyam, 1993 and, therefore, the impugned order is liable to be set aside.

(4) On the other hand, counsel for the respondents oppose the writ petition and would support the impugned order.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(6) In order to judge the correctness of the plea raised at the Bar, it would be expedient to notice the provisions contained in sub-section (5) of Section 25 of the Act of 1993, which states as under:-

**“25. Election of President and Vice-President of Janapad Panchayat.-**

(1) to (4)        \*\*\*\*                \*\*\*\*                \*\*\*\*

(5) If a President or Vice-President of Janapad Panchayat become a member of either house of Parliament or a member of the State Legislative Assembly or a Chairman or Vice-Chairman of Co-operative Society, he shall be deemed to have vacated his office as President or Vice-President as the case may be, with effect from the date of his becoming such member or Chairman or Vice-Chairman and a casual vacancy shall be deemed to have occurred in such office for the purposes of section 38.”

(7) The two questions that arise for consideration in this petition are as under :-

(I) Whether the post of Vice-President of Jila Sahkari Kendriya Bank and the post of Vice-Chairman of the Co-operative Society is one and same within the meaning of Section 25(5) of Act of 1993 or both are different posts for the said provision?

(II) What is the meaning and purport of “deemed to have vacated” used in Section 25(5) of the Act of 1993, whether opportunity of hearing is required in holding that petitioner has vacated the office ?

**Answer to question No.(1)**

(8) Admittedly, petitioner has been elected as Vice-President of Jila Sahkari Kendriya Bank on 08.03.2016 and as on that day he was holding the post of Vice-President of Janpad Panchayat. His case is that he has not been elected as Vice-Chairman of the Jila Sahkari Kendriya Bank, but he has been elected as Vice-President of the said Bank and therefore his case is not covered by Section 25(5) of Act of 1993. The Chhattisgarh Co-operative Societies Rules, 1962 has been framed by the erstwhile State of Madhya Pradesh which is also applicable to the State of Chhattisgarh. Rule 2(m) defines Vice-President as under:-

**“2. Definitions.** – In these rules, unless the context otherwise requires,-

(a) to (l)

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(m) “*Vice-President*” means the Vice-President or Vice-Chairman of a society.”

Thus, Vice-President includes Vice-Chairman of the Society also. Therefore, the petitioner having been elected as Vice-

President of the Jila Sahkari Kendriya Bank is covered by Section 25(5) of the Act of 1993 and petitioner cannot be allowed to say that he being the Vice-President of the Bank is not covered by Section 25(5) of the Act of 1993. Accordingly, the contention raised on behalf of the petitioner in this regard is repelled.

### **Answer to question No. 2**

(9) This would lead me to the next question as to whether the petitioner is entitled for an opportunity of hearing under Section 25(5) of the Act of 1993.

(10) The legislature is competent to create a legal fiction for the purpose of assuming the existence of effect which does not really exist. Sub-section (5) of Section 25 of the Act of 1993 contained two deeming provision such as “deemed to have vacated”, “deemed to have occurred”. Let us first examine legal consequence of a deeming provision.

(11) The Supreme Court in the matter of **Rishabh Agro Industries Ltd. v. PNB Capital Services Ltd.**<sup>1</sup> defined the word “*deemed*” with reference to provisions of the Companies Act as under:-

“The word “deemed” used in the section would thus mean, “supposed”, “considered”, “construed”, “thought”, “taken to be” or “Presumed”.

(12) The Supreme Court in the matter of **Harish Tandon v. Additional District Magistrate, Allahabad**<sup>2</sup> has held that full effect has to be given to the legal fiction created by statute and held as

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1 (2000) 5 SCC 515

2 (1995) 1 SCC 537

under:-

“13. The role of a provision in a statute creating legal fiction is by now well settled. When a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to such statutory fiction and it has to be carried to its logical conclusion.....”

(13) James, **L.J. in *levy, In re, ex p Walton***<sup>3</sup> speaks on deeming fiction as:

“...When a statute enacts that something shall be deemed to have been done, which in fact and [in] truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.”

(14) In the matter of **Szoma v. Secy. Of State for Work and Pensions**<sup>4</sup> the Court held:

“25. .... it would...be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. ‘the intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further’ ....”

(15) The Supreme Court in the matter of **S. Gopal Reddy v. State of A.P.**<sup>5</sup> held as under:-

“12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.”

3 (1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)

4 (2006) 1 AC 564 : (2005) 3 WLR 955 : (2006) 1 All ER 1 (HL)

5 (1996) 4 SCC 596 : 1996 SCC (Cri) 792

(16) Their Lordships of the Supreme Court in the matter of

**Jugalkishore Saraf v. Raw Cotton Co. Ltd.**<sup>6</sup> stated as under:-

“6. ....The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.”

(17) The Supreme Court in the matter of **J. K. Cotton Spinning**

**and Weaving Mills Ltd. v. Union of India**<sup>7</sup> it was held as under:-

“It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provisions under Explanations to Rules 9 and 49, although the goods which are produced or manufactured at an intermediate stage and, thereafter, consumed or utilized in the integrated process for the manufacture of another commodity is not actually removed shall be construed and regarded as removed. The Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist.”

(18) Further, their Lordships of the Supreme Court in the matter of

**M. Venugopal v. Divisional Manager, Life Insurance Corpn. of**

**India**<sup>8</sup> after referring to the case of ***East End Dwellings Co. Ltd.***

***v. Finsbury Borough Council***<sup>9</sup> held that legislature can introduce

a statutory fiction and courts have to proceed on assumption that

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6 AIR 1955 SC 376

7 1987 Supp SCC 350 : AIR 1988 SC 191

8 (1994) 2 SCC 323

9 1952 AC 109 : (1951) 2 All ER 587

such state of affairs exists on relevant date.

(19) In the matter of **Harish Tandon** (supra), the Supreme Court considering the deeming provision contained in Section 12(2) of the U.P. Urban Buildings (Regulation of letting, rent and eviction) Act, 1972 which provides for deemed vacancy, held as under:-

“17. When sub-section (2) of Section 12 provides that whenever a tenant carrying on business in a building admits a person, who is not a member of his family, as a partner, the tenant shall be deemed to have ceased to occupy the building, full effect has to be given to the mandate of the Legislature. There is no escape from the conclusion that such tenant has ceased to occupy the building. No discretion is left to the court to enquire or investigate as to what was the object of such tenant while inducting a person as partner who was not the member of his family. It can be said that the aforesaid statutory provision requires the court to come to the conclusion that by the contravention made by the tenant, such tenant has ceased to occupy the building. The framers of the Act have not stopped only at the stage of Section 12(2) but have further provided in Section 25, Explanation (i) another legal fiction saying that where the tenant ceases to occupy the building within the meaning of sub-section (2) of Section 12 “he shall be deemed to have sub-let that building or part”. In view of the three deeming clauses introduced in sub-section (2) of Section 12, sub-section (4) of Section 12 and Explanation (i) to Section 25, no scope has been left for the courts to examine and consider the facts and circumstances of any particular case, as to what was the object of admitting a person who is not the member of the family, as partner and as to whether, in fact, the premises or part thereof have been sub-let to such person.”

(20) In section 25(5) of Act of 1993, there is a deemed vacancy if a President or Vice-President of Janpad Panchayat becomes a member of either house of Parliament or a Member of the State

Legislative Assembly or a Chairman or Vice-Chairman of Co-operative Society, he shall be deemed to have vacated his office as President or Vice-President as the case may be, with effect from the date of his becoming such member or Chairman or Vice-Chairman, and a casual vacancy shall be deemed to have occurred in such office for the purposes of Section 38.

(21) Section 38 of the Act of 1993 provides for filling up of the casual vacancy of the Panchayat in event of death, resignation, No-confidence motion, or removal of an office bearer of the Panchayat or on his becoming member of House of Parliament before the expiry of his term by election in accordance with the provisions of the Act and rules made thereunder.

(22) The question of vacancy was considered by the Supreme Court in **Raja Ram Paul v. Hon'ble Speaker, Lok Sabha**<sup>10</sup> and distinction was made between disqualification, vacancy and expulsion. The Court observed that though disqualification and expulsion both result in the vacancy of a seat, there is no necessity to read one in a way that restricts the scope of the other. The expulsion on being found unfit for functioning within the House in no way affects the qualifications that a Member must fulfill, and there is no reason for the latter to affect expulsion. Both of the provisions can operate quite harmoniously.

(23) The word 'vacate' has been employed in Section 25(5) of the Act of 1993. In the matter of **Surinder Singh Sibia v. Vijay**

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10 (2007) 3 SCC 184

**Kumar Sood**<sup>11</sup> Supreme Court has defined the word as under:-

**“Vacate”**

Normally means to go away, to leave”

(24) Likewise, the word ‘vacancy’ with reference to Representation of People Act, 1951 has been defined by Supreme Court in the matter of **Election Commission of India v.**

**Telangana Rashtra Samiti**<sup>12</sup> as under:-

“In order to be filled up in a bye-election, a vacancy must be available for being filled up. In a situation such as that contemplated by the latter half of Section 84 and its consequences as reflected in Sections 98(c), 101 (b) and 8-A of the RP Act, it cannot be said that a vacancy in such a situation would be a vacancy available for being filled up by a bye-election, particularly in a situation where allegations of corrupt practices have been made which, if proved, provides for disqualification under Section 8-a of the said Act. Simply by submitting his resignation, a successful candidate against whom allegations of corrupt practices are made, cannot escape the consequences of Section 8-A of the Act, if the same are ultimately found to be proved.”

(25) Thus, by operation of law, the petitioner holding the post of Vice-President of Janpad Panchayat having been elected as a Vice-President of the Jila Sahkari Kendriya Bank is deemed to have vacated the office of Vice-President of Janpand Panchayat, Pratappur and the casual vacancy in terms of Section 38 of the Act of 1993 is deemed to have occurred, since the vacation of the office is automatic under the law and there may not be any question for providing any reasonable opportunity of being heard to the person concerned unless facts are disputed, as under Section 25(5) of the Act of 1993 no disqualification or expulsion is

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11 (1992) 1 SCC 70

12 (2011) 1 SCC 370

contemplated. Thus, the submission of learned counsel that the impugned order declaring the office of Vice-President, Janpad Panchayat is vacated without affording opportunity of hearing deserves to be rejected.

(26) As a fallout and consequence of aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-