

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10621 of 2015

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Dinesh Kumar Sahani, S/o Ram Charitra Sahani, Resident of Village Gudarghat, P.O.-Sripur Gahar, P.S.-Khanpur, District-Samastipur, at present Chairman of Sripur Gahar Purvi Primary Agriculture Credit Co-operative Society Ltd., P.S.- Khanpur, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Registrar, Cooperative Societies Bihar, Patna.
3. The Additional Registrar, Cooperative Societies, Bihar, Patna.
4. The District Cooperative Officer, Samastipur-cum-Managing Director, Central Cooperative Bank, Samastipur-cum-Assistant Registrar, Cooperative Societies, Samastipur.
5. Ram Kishore Jha, S/o Hare Ram Jha, Resident of Village + P.O. Sripur Gahar, P.S.-Khanpur, District-Samastipur, Member of Managing Committee-cum-So called Acting Chairman Sripur Gahar, Purvi PACS, Ltd., Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate

For the Respondent/s : Mr. M.K. Sinha, SC-1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-12-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Respondent No.5.

2. In the present writ petition the petitioner has challenged the order dated 22.04.2015/11.05.2015 passed by the respondent no.3 in Case No.161 of 2015 and the resolution dated



20.12.2014 passed by the Managing Committee of Sripur Gahar, Purvi Primary Agricultural Credit Co-operative Society Ltd. (for short 'PACCS').

3. From perusal of the impugned order dated 22.04.2015/11.05.2015, as contained in Annexure-1, it appears that the respondent no.3 has approved the decision and action of the Managing Committee on the basis of evidences produced before him.

4. From perusal of the impugned resolution dated 20.12.2014 of the Managing Committee of the PACCS, it would be evident that the Managing Committee transacted the business of PACCS in absence of the Chairman after appointing one Ram Kishore Jha as Chairman for the meeting on that day. It would further appear from the said resolution that since the petitioner did not take any steps to call for the meeting of the Managing Committee in accordance with bye-laws of the PACCS and he failed to discharge his duties, out of the 13 elected members of the Managing Committee, 11 met together and decided to seek help from the Co-operative Department for transaction of the business of the PACCS. The Managing Committee also resolved that since post of the Chairman fell vacant due to default, Mr. Ram Kishore Jha shall be the acting Chairman.



5. Mr. Deepak Kumar, learned counsel for the petitioner submitted that being the Chairman of the society as per the provision of law, the petitioner had convened meeting of the Managing Committee in past and issued notice to all the members of the Managing Committee, but they did not attend the meeting convened at his instance.

6. He submitted that respondent no.5, Mr. Ram Kishore Jha, a member of the Managing Committee not authorized under the provision of law convened the meeting of the Managing Committee on several dates and, ultimately, on 20.12.2014 declared the post of Chairman as vacant on the ground that the Chairman did not attend the three consecutive meetings of the Managing Committee and, hence, respondent no.5 was nominated as acting Chairman of the society by the Managing Committee, which is wholly illegal in the eye of law. He contended that after passing the resolution on 20.12.2014, respondent no.5 filed Case No.161 of 2015 before the Registrar for approval of the removal of the Chairman as well as appointment of acting Chairman and the same was transferred to the Additional Registrar (respondent no.3) for disposal without impleading the Chairman as party and the learned Additional Registrar without issuing any notice to the petitioner or without hearing him approved the resolution of



removal and appointment of acting Chairman, which is against the principle of natural justice.

7. *Per contra*, learned counsel appearing for the respondent nos.1 to 4 submitted that the impugned order dated 22.04.2015/11.05.2015 passed by respondent no.3 by which he has approved the decision and action of the Managing Committee on the basis of evidences produced before him is justified in accordance with bye-laws Nos. 28 and 29 of the society, which provide that in the absence of Chairman, any other member elected by the present members shall act as the Chairman. He contended that after election on 11.11.2014, the petitioner did not take steps to call for the meeting of the Managing Committee in accordance with bye-laws No.27 of the society. The decision taken vide resolution dated 20.12.2014 was approved.

8. It would be manifest from the pleading of the parties that when the elected Chairman failed to call meeting, out of 13 elected members, 11 became active and met together to decide future course of action. They decided to hold meeting of the Managing Committee on 23.11.2014 and for that, the members of the Managing Committee issued notice to the petitioner by registered post but, he neither attended the meeting nor sent any reply for not attending the same. Thereafter, respondent no.5 in the



capacity of acting Chairman fixed dates for meeting on 05.12.2014 and 20.12.2014 respectively. It is the case of the respondents that the petitioner was informed by issuing notices through registered post, which returned back. It is also their case that since the petitioner did not attend three consecutive meetings, the Managing Committee decided the post of Chairman as vacant and appointed respondent no.5 as acting Chairman. It also resolved to hold election for the vacant post of Chairman.

9. Replying to the contentions advanced on behalf of the respondents, learned counsel for the petitioner submitted that even if the meeting convened on 20.12.2014 under the acting Chairman (respondent no.5) is treated to be valid, by no stretch of imagination, the Managing Committee could have declared the post of Chairman to be vacant and appointed respondent no.5 as Chairman on the said post. He contended that an elected Chairman can be removed by challenging the election in election petition only and not otherwise.

10. At this stage, learned counsel appearing for the respondents submitted that the respondents are interested only in transaction of the business of the society and not in removing the petitioner from the post of Chairman. The respondents were



compelled to take the extreme step, as the petitioner had completely failed in discharge of his duties.

11. I have heard learned counsel for the parties and carefully perused the record.

12. The Rules of Bihar Co-operative Societies Rules, 1959 (for short 'Rules of 1959') authorize the Chairman to convene the meeting. The bye-laws of the PACCS gives power to the Managing Committee to call for the meeting of the Managing Committee in case the Chairman fails to take step to call for the meeting. As per bye-laws of the PACCS, if the Chairman fails to attend the meeting of the Managing Committee on three consecutive dates, the Managing Committee may appoint any other member as Chairman to transact the business of the PACCS till next General Election.

13. Section 14 of the Act of 1935 provides that every registered society shall have an address registered in accordance with rules to which all notices and communication may be sent.

14. Sub-section (2) of Section 14 provides that the management of the registered society shall be vested in Managing Committee constituted in accordance with provisions of the act and rules/bye-laws of the society under the Act.



15. From a perusal of sub-section (9) of Section 14 of the Act of 1935, it would appear that notwithstanding anything contained in any provision of rules or the bye-laws of any Co-operative Society the term of office of elected members of the Board and its Office-bearers shall be five years from the date of election and the term of Office-bearers shall be co-terminus with the term of the Board.

16. From a conjoint reading of section 14 of the Act of 1935 and rule 22 of the Rules of 1959, it would appear that the management of registered society is vested in Managing Committee constituted in accordance with the provisions of the act and rules and the members of the Managing Committee and the office-bearers shall be deemed to have taken over charge immediately after the constitution of the Managing Committee also provided that constitution of the Committee shall not be treated as complete unless and until the elected members together with the ex-officio members, if any, constitute fifty per cent or more of the Managing Committee.

17. Here, in the present case, since the elected Chairman failed to attend the meeting, out of 13 members, 11 became active and met together and took certain decisions, the resolution passed by the Managing Committee in the meeting, save



and except, whereby the petitioner was removed cannot be faulted with.

18. There is no dispute to the fact that the petitioner was the elected Chairman of the said PACCS. However, it is disputed as to whether or not the petitioner had failed to attend three consecutive meeting. The fact that in Case No.161 of 2015 filed before the Registrar for approval of the resolution dated 20.12.2014, the petitioner was not made party. He was also not noticed in the said case and without hearing him, the resolution was approved by the respondent no.3.

19. Considering the totality of the circumstances, I am of the opinion that the removal of the petitioner from the post of Chairman could not have been approved by the respondent no.3 in absence of the petitioner having been noticed and given an opportunity of being heard and to that extent the impugned order dated 22.04.2015/11.05.2015 is bad in law. Hence, the decision of the Managing Committee to hold the post of Chairman to be vacant is bad in law. The order impugned and the resolution are set aside to that extent. As far as the other decisions taken in the meeting of the Managing Committee dated 20.12.2014 are concerned, the same need no interference by this Court.



20. With the aforesaid observations and direction, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.12.2018
Transmission Date	NA

