

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1221 of 2018

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1. Ranjan Kumar Singh, son of Sri Rajendra Prasad Singh, Resident of Village- Dashrath Khap, P.O. Madanpur, P.S. Madanpur, District- Aurangabad, presently residing at M/3/26, Sri Krishnapuri, Near Basawan Park, P.O.- G.P.O. Patna, P.S. Sri Krishanpuri, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Bihar State Election Authority, 32, Harding Road, Patna, through the Chief Election Officer.
4. The Chief Election Officer, The Bihar State Election Authority, 32, Harding Road, Patna.
5. The District Magistrate-cum- District Election Officer (Cooperative), Aurangabad, District- Aurangabad.
6. The Sub- Divisional Officer, Aurangabad-cum- Returning Officer, Central Cooperative Bank Election, Aurangabad, District- Aurangabad.
7. Sanjay Kumar Singh, son of Sri Krishna Nandan Yadav, Resident of Village- Harbansa, P.O. Lahsa, P.S. Pouthu, District- Aurangabad.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1533 of 2018

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1. Sanjay Kumar Singh @ Sanjay Kumar, S/o Krishnandan Singh, resident of Village- Harbansha, P.S.- Pouthu, District- Aurangabad.

.... Petitioner/s

Versus

1. The Bihar State Election Authority, 32, Harding Road, Patna, through Chief Election Officer.
2. Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna.
3. District Election Officer cum District Magistrate, Aurangabad.
4. Returning Officer cum S.D.O. Aurangabad.
5. Joint Registrar, Magadh Division, Gaya.
6. District Audit Officer, Aurangabad.
7. The State of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1229 of 2018

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1. Ramanuj Singh, aged about 57 years, S/o Late Radha Raman Singh, Resident and P.O. Belsara, P.S. Deo, District- Aurangabad.

.... Petitioner/s



Versus

1. The State of Bihar Chief Secretary Govt. of Bihar.
2. The Principal Secretary, Department of Co-operative, Govt. of Bihar, Patna.
3. The Chief Election Officer, Bihar Rajya Nirwahan Pradhikar, Harding Road, Patna.
4. The Sub- Divisional Magistrate-Cum- Returning Officer, Aurangabad.
5. Sanjay Kumar Singh, S/o Krishna Nandan Singh, President, Itar PACS, Village- Itar, P.S.- Rafiganj, District- Aurangabad.

.... Respondent/s

Appearance :

(In CWJC No.1221 of 2018)

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.
Ms Aradhna Kamal, Adv.
Mr. Bhagwati Prasad, Adv.

For the State : Mr. AMIT PRAKASH- GA13

For Election Commission: Mr. Mukesh Kumar Thakur, Adv.

(In CWJC No.1533 of 2018)

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.

For the State : Mr. Sushil Kumar- GP22

For Election Commission: Mr. Mukesh Kumar Thakur, Adv.

(In CWJC No.1229 of 2018)

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv.

For the State : Mr. Raj Ballabh Pd. Yadav- AAG11

For Election Commission: Mr. Mukesh Kumar Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 03-04-2018

Heard learned counsel for the respective petitioners in these petitions and learned counsel for the respondents.

2. For ready reference, the prayers made in these writ petitions are set out below :

CWJC No. 1221 of 2018

- (I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 10.01.2018 passed by the Respondent no.6 and issued under his memo no.11 dated 10.01.2018, whereby and whereunder he was pleased to accept the nomination



filed by the Respondent no.7 to contest for the post of Chairman of the Aurangabad Central Co-operative Bank Ltd. notwithstanding the fact that he was thoroughly disqualified to contest the election in view of the provisions contained under Rule-23(2)(d) and (e) of the Bihar Cooperative Societies Rules, 1959 and the State Election Authority had also issued an advisory to the Respondent no.6 to this effect vide his letter no.31 dated 10.01.2018.

- (II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 11.01.2018 issued under the signature of the Respondent no.4 and contained in his memo no.43 dated 11.01.2018, whereby and whereunder the Respondent no.4 has been pleased to postpone the election of the Board of Directors of the District Central Cooperative Bank, Aurangabad which was scheduled to be held on 18.01.2018 in the light of letter of Respondent no.5 as contained in letter no.89 dated 10.01.2018.
- (III) Consequent upon the quashing of the order dated 10.01.2018 passed by the Respondent no.6 accepting the nomination of Respondent no.7 and the letter dated 11.01.2018 of the Respondent no.4 as contained in his memo no.43 dated 11.01.2018, a writ of MANDAMUS be issued to the Respondent nos. 4 and 6 to complete the process of election by declaring the writ petitioner uncontested for the post of Chairman of the District Central Cooperative Bank, Aurangabad



on the ground that there were only two candidates for the post namely the petitioner and the Respondent no.7 and if the nomination of Respondent no.7 is rejected, the petitioner would only remain as the surviving candidate for the post of Chairman.

- (IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the fact and circumstances of the case.

CWJC No. 1533 of 2018

- (i) For quashing of notification contained in Memo no.43 dated 11.01.2018 issued under the signature of Chief Election Officer, Bihar State Election Authority whereby and whereunder entire process regarding the election of Board of Director of District Central Cooperative Bank, Aurangabad which was notified vide notification No. 1218 dated 11.12.2017 has been cancelled in the light of the letter of District Magistrate cum District Election Officer, Aurangabad contained in letter No. 89 dated 10.01.2018.
- (ii) For a direction to proceed with the notified election from the stage, the same was stopped/cancelled and conduct the election accordingly.
- (iii) For a direction to consider the nomination of the petitioner for the post of Chairman of Board of Director as valid in the said election.
- (iv) Any further for any relief/reliefs, to which the petitioner is found entitled to.



CWJC No. 1229 of 2018

“That this is an application for quashing the Notification dated 11/1/2018 issued by Respondent No.3, cancelling the election of Directors of District Central Cooperative Bank, Aurangabad by issuing writ in the nature of certiorari and thereby declare the petitioner as Director of Aurangabad Co-operative Society whose nomination has been found to be valid and has been declared imposed.”

3. Subsequently in the first two writ petitions, two additional prayers have been made through interlocutory applications, which have been treated as part of the writ petition with consent of the parties. They are set out as under :-

I.A. No. 2177 of 2018

IN

CWJC No. 1221 of 2018

“11. (i) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the notification dated 16.03.2018 contained in memo no. 236 dated 16.03.2018 whereby and whereunder the State Election Authority has declared fresh schedule for holding election to the managing committee of District Central Cooperative Bank, Aurangabad on the ground that if the election has already progressed to the stage of Scrutiny of Nomination papers, the State Election Authority cannot proceed to notify the fresh schedule of election de novo only because the previous returning officer had acted without jurisdiction when



he had accepted the nomination paper of private Respondent No.7.”

I.A. No. 2539 of 2018

IN

CWJC No. 1533 of 2018

“That this interlocutory application is being filed for stay of Election process which is being conducted in pursuance of fresh notification contained in memo no. 236 dated 16.03.2018 issued by respondent no.2, whereby fresh schedule for holding election from beginning i.e. from the stage of filing nomination has been issued and in-fact process of Nomination and its scrutiny has been concluded although on the same issue hearing has been concluded..”

4. It would be manifest that apart from some other prayers, a common prayer has been made by all the three petitioners for quashing the notification dated 11.01.2018 issued by the Chief Election Commissioner, Bihar State Election Authority whereby the election of the Board of Directors (for short ‘the Board’) of the District Central Co-operative Bank, Aurangabad (for short ‘the Bank’), which was notified vide notification no. 1218 dated 11.12.2017, has been cancelled in the light of the letter of the District Magistrate-cum-District Election Officer, Aurangabad contained in letter no. 89 dated 10.01.2018.



5. At the outset, be it noted that the petitioner in CWJC No. 1533 of 2018 has been made respondent no.7 in CWJC No. 1221 of 2018.

6. To appreciate the controversy raised in these petitions, the short facts in the first writ petition may be noted, which according to the petitioner are that the State Election Authority (for short 'the Authority') in exercise of its power under the State Election Authority Act, 2008 (for short 'Act of 2008') read with State Election Authority Rules, 2008 (for short 'Rules of 2008') notified election programme for holding elections for the Board of the Bank on 11.12.2017 fixing the date of nomination as 08.01.2018, the date of scrutiny as 09.01.2018, the date of withdrawal of nomination as 10.01.2018 and the date of election and counting as 18.01.2018. The Sub-Divisional Officer, Aurangabad was appointed as the Returning Officer of the said election. In all 16 candidates filed their nomination on the scheduled date. For the post of Chairman, only two nominations were filed, one by the writ petitioner and the other by the respondent no.7. When the nomination paper of respondent no.7 was taken up for scrutiny, the petitioner filed an objection on the ground that he was disqualified to contest the election in view of the provisions contained under Rule 23(2)(d) of the Bihar Co-operative Societies Rules, 1959 (for short 'Rules of 1959') as a surcharge



proceeding was pending against him in the court of Joint Registrar, Co-operative Societies. On the same date, another objection was also filed by the petitioner against the nomination paper of respondent no.7 and prayer for its rejection was again made on the ground that in the affidavit filed along with his nomination paper he had concealed this fact that he is facing surcharge proceeding before the Joint Registrar, Co-operative Societies, Magadh Division, Gaya. The petitioner also sent a copy of the application to the Chief Election Officer (Respondent No.4) on 09.01.2018 itself. The respondent no.7 filed his reply to the objection raised by the petitioner. After receiving the objection filed by the petitioner and the rejoinder filed by the respondent no.7, the Sub-Divisional Officer, Aurangabad-cum-Returning Officer forwarded the objection of the petitioner and rejoinder of the respondent no.7 to the Authority seeking its guidance on the issue. Until receiving information from the Authority, the correctness of nomination of respondent no.7 was postponed. After receipt of the papers from the Sub-Divisional Officer-cum-Returning Officer, Aurangabad, the Authority communicated to respondent no.6 that in terms of Rules 23(1) and 23(2) of the Rules of 1959 it is provided that if a surcharge proceeding relating to a registered society is pending against the person, he would be disqualified to contest the election. The Authority, thus, advised the respondent no.6 to act



accordingly. After receipt of the letter of the Authority, respondent no.6 took up the scrutiny of nomination of the respondent no.7 and passed a reasoned order dated 10.01.2018 on the objection of the petitioner and accepted the nomination of respondent no.7.

7. It is submitted by Mr. S.B.K. Manglam, learned counsel for the petitioner that the petitioner brought the fact of acceptance of nomination of the respondent no.7 to the notice of the District Magistrate-cum-District Election Officer (Co-operative), Aurangabad (Respondent no.5) on 10.01.2018 itself complaining about the action of the Returning Officer whereby ignoring the advisory of the Authority he had accepted the nomination of the respondent no.7. The respondent District Election Officer, Aurangabad vide his letter no. 89 dated 10.01.2018 informed the Authority regarding alleged action of the Returning Officer. In his letter, he has stated that prima facie it appeared that the Returning Officer had violated the advisory issued by the Authority and the mandate of law. After receipt of the aforesaid letter of the respondent no.5, the Authority issued notification dated 11.01.2018 under Memo no. 43 whereby all the actions taken in respect of election of the Board of the Bank pursuant to the notification no. 1218 dated 11.12.2017 were cancelled.

8. Mr. Manglam submitted that during pendency of the writ petition, the Authority came out with two notifications vide



notification contained in memo no.202 dated 09.03.2018 whereby the Authority appointed Sri Purushottam Paswan, Senior Deputy Collector, Aurangabad as Returning Officer modifying the earlier notification by which the Sub-Divisional Officer was appointed as Returning Officer and the other notification contained in memo no. 236 dated 16.03.2018 whereby the Authority notified a fresh schedule of election for Managing Committee for the District Central Co-operative Bank, Aurangabad fixing 26.03.2018 as the date for filing nomination, 27.03.2018 as the date for scrutiny, 28.03.2018 as the date for withdrawal of nomination and 05.04.2018 as the date for voting and counting. It was urged that the order dated 10.01.2018 passed by the Returning Officer accepting the nomination of the respondent no.7 and the order dated 11.01.2018 whereby the respondent no.4 canceled all the actions taken pursuant to the notification dated 11.12.2017 for election of the Board of the Bank are bad in law and cannot be sustained. He submitted that the Returning Officer had acted arbitrarily and unreasonably in accepting the nomination of the respondent no.7 ignoring the statutory rules and advisory issued by the Authority. The decision, therefore, so far as acceptance of nomination of respondent no.7 is concerned deserves to be quashed and set aside. He argued that had the Returning Officer acted legally and in consonance with the guidelines issued by the



Authority, he would have rejected the nomination forms submitted by the respondent no.7. He submitted that Rule 23(2)(d) of the Rules of 1959 categorically provides that no delegate/representative of an affiliated society shall be eligible for election to the Managing Committee if an enquiry relating to any transaction of the registered society to the Managing Committee of which he seeks election is pending against him. According to him, it is undisputed fact that the Joint Registrar, Co-operative Societies, Magadh Division, Gaya had initiated surcharge proceeding for recovery from the members of the Board of which the respondent no.7 was the Chairman. He submitted that Surcharge Case Nos. 14 and 16 of 2014-15 were disposed of by the Joint Registrar. Against the order passed by the Joint Registrar, the Board through the Chairman (Respondent no.7) had filed Surcharge Appeal Case No. 2 of 2016 before the Co-operative Minister, Bihar, Patna, who had stayed the order passed by the Joint Registrar, in the surcharge case and remanded the matter back to the Joint Registrar, Co-operative Societies, Magadh Division, Gaya for fresh hearing and order. He submitted that on remand the case was heard by the Joint Registrar on 06.01.2018 and was adjourned to 09.02.2018. He, thus, submitted that Surcharge Case No. 14 of 2014 and Surcharge Case No. 16 of 2014-15 are still pending against the respondent no.7 before the court of Joint Registrar, Co-operative



Societies.

9. Mr. Manglam submitted that the nature of order which the Returning Officer had passed on 10.01.2018 was not within his competence. It was none of his business to look into the correctness or propriety of a proceeding for which a candidate is disqualified to contest. He cannot sit in appeal against the order passed in surcharge proceeding by a competent authority.

10. Advancing his submissions, Mr. Manglam argued that once the election process had started and notification was issued for election calling upon to elect the Board of the Bank, it was the duty of the Authority to complete the election process. He submitted that the Authority had no jurisdiction to scrap the notification after the nominations were filed. According to him, the Authority ought to have rejected the nomination of the respondent no.7 and declare the petitioner elected uncontested on the post of Chairman of the Board of the Bank. He submitted that the Authority has acted illegally in cancelling the notification dated 11.12.2017.

11. Responding to the arguments advanced on behalf of the petitioner, Mr. Ajay Kumar Singh, learned counsel appearing for the respondent no.7 submitted that the objection filed by the petitioner at the time of scrutiny of nomination for election was repelled by the Returning Officer after going through the reply filed by the answering



respondent. He submitted that the respondent no.7 had pleaded before the Returning Officer that surcharge proceeding was not against him rather it was against different persons and, furthermore, that the order implicating him in the proceeding had been stayed by the Minister in a duly instituted appeal preferred before him and, thus, the said surcharge proceeding had nothing to do so far as nomination of the respondent no.7 was concerned. He urged that the Returning Officer after considering the rival contentions of both the parties had rightly arrived at a conclusion that in the given facts of the case the nomination forms of the respondent no.7 were fit to be accepted. He urged that whether the Returning Officer had rightly accepted the nomination paper or not would be a question coming under the purview of Section 12(1)(c) of the Act of 2008, which prescribes ground for declaring the election to be void. Placing reliance on a decision of this Court in *Md. Shamim Vs. State of Bihar & Ors. [2018(1) PLJR 600]*, he submitted that the issue of illegal rejection of nomination or improper acceptance of nomination paper can only be challenged by way of filing an election petition. He urged that since the petitioner is aggrieved by acceptance of nomination paper by the Returning Officer, in view of the ratio laid down by this Court in *Md. Shamim* (Supra), the petitioner has remedy by way of filing election petition after completion of the election process. He submitted that



the Authority had no jurisdiction to interfere with the final decision of the Returning Officer accepting or rejecting the nomination papers. According to him, once the Returning Officer had accepted the nomination papers of the petitioner and the respondent no.7 as valid, the election process ought to have been completed. He submitted that the Authority is not an appellate authority to examine the validity of the decision taken by the Returning Officer. According to him, even if it is accepted that it was a case of improper acceptance of nomination paper of the respondent no.7, it could have been examined by an appropriate authority only in a properly instituted election petition and not otherwise.

12. On the basis of the aforesaid submissions, Mr. Ajay Kumar Singh, learned counsel for the respondent no.7 submitted that the cancellation of all actions taken pursuant to the notification dated 11.12.2017 by the Authority and re-notification of the schedule of election are grossly illegal, arbitrary, unjust and unsustainable in the eyes of law. He urged that before initiation of surcharge proceeding, the respondent no.7 was not given any notice to the effect that a surcharge proceeding is going to be initiated against him. The proceedings were initiated against three persons, namely, Baliram, Singh Yadav, Chairman of Fag, PACCS Goh, Jainendra Prabhakar, Assistant Manager, Fag PACCS Goh and one Ram Bihari Singh, the



then Branch Manager, Central Co-operative Bank, Goh, Deohara PACCS. However, subsequently, name of respondent no.7 was also introduced. Being aggrieved, the respondent no.7 filed an appeal, which was taken up by the Minister, Co-operative Society, who stayed the proceeding and remanded the matter back for fresh hearing. He urged that at no stage of deciding the matter either by the District Magistrate, Aurangabad or by the Authority the respondent no.7 had been given opportunity of hearing in compliance of the principles of natural justice. According to him, interference by the District Magistrate in the matter was totally unwarranted and the Authority ought not to have taken note of anything said or communicated by the District Magistrate in the matter of election of the Board of the Bank.

13. Mr. Mukesh Kumar Thakur, learned counsel appearing for the respondent Authority submitted that the Authority is vested with the comprehensive responsibility and powers and functions to hold free and fair elections. The Authority is a statutory body. He submitted that in order to achieve the purpose, it may cancel or scrap the election at the stage of nomination or at any subsequent stage before the final publication of result and publish a fresh schedule for election if the circumstances so warrants. He submitted that under the 97th amendment of the Constitution of India several incorporations



were made. With reference to Part-IXB of the Constitution of India, He submitted that several provisions were added under this Part to promote co-operative movement. An obligation has been cast on the Authority to ensure that the elections of the Co-operative Societies are held expeditiously in a free and fair manner. He submitted that Section 4 of the Act of 2008 vests the Authority with the power of superintendence, direction and control of the conduct of elections, which is akin to Article 324 of the Constitution of India. According to him, till the election process is complete, the Authority is fully competent to give any direction in respect of conduct of election. He submitted that since the Returning Officer had grossly erred in accepting the nomination paper of respondent no.7 against whom surcharge proceedings were going on even after obtaining advise from the Authority in this regard, the Authority rightly cancelled the entire steps taken for election and published a fresh schedule for election after removing the Returning Officer and appointing the Senior most Deputy Collector as the Returning Officer in order to conduct a free and fair election. He submitted that since the election process was not completed and at the stage of scrutiny of nomination itself the Authority came to know about the misconduct of the Returning Officer, it cancelled the election and notified fresh schedule for holding election, which cannot be termed to be illegal,



arbitrary or unjust. He submitted that the parties should have no grievance as they are not deprived of opportunity to contest as a fresh election schedule has already been notified.

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

15. At this stage, I think it appropriate to take note of the submissions made by Mr. Rajendra Prasad Singh, learned Senior Advocate appearing for the petitioner in CWJC No. 1229 of 2018. He has adopted all the submissions made by the learned counsel for the petitioner in CWJC No. 1221 of 2018. Apart from the submissions already made, he added that the petitioner in CWJC No. 1229 of 2018 had filed his nomination for the post of Director of Professional (General) Group-1. He urged that two posts of Directors are available in Professional (General) Group-1 and out of two posts only the petitioner had filed his nomination, which was accepted by the Returning Officer and there being no illegality in his nomination, he ought to have been declared elected. He submitted that the petitioner had not committed any mistake in any manner in filing his nomination and, thus, there was no reason why he should be asked to contest in terms of the fresh schedule of election.

16. So far as the facts of the case are concerned, there appears to be no dispute. It would be manifest that for the post of



Chairman of the Board of the Bank only two nominations were filed, one by the writ petitioner and the other by the respondent no.7 (petitioner in CWJC No. 1533 of 2018). The nomination papers filed on behalf of the petitioner and the respondent no.7 were accepted by the Returning Officer after scrutiny. However, no election was held. The Authority, having come to know about certain irregularities and misconduct of the Returning Officer, intervened into the matter and vide notification dated 11.01.2018 cancelled all the steps taken in respect of election of the Board of the Bank and further vide notification dated 16.03.2018 published a fresh schedule of election. The respondent no.7 has not disputed the fact that surcharge proceedings were initiated in respect of the Society of which he was the elected Chairman. He has also not disputed the contention of the petitioner that he is contesting the said proceedings. It is the case of the respondent no.7 that an appeal filed by him before the Minister was entertained in which the order passed by the Joint Registrar, Co-operative Societies was stayed and the proceedings were remanded back for fresh hearing. Thus, apparently, there is no dispute as far as pendency of surcharge proceedings against the respondent no.7 is concerned.

17. The disputed issue is as to whether the Authority acted illegally and arbitrarily in cancelling all the steps taken pursuant to



the notification dated 11.12.2017 published in respect of election of the Board of the Bank. Another important issue is as to whether the Authority had any jurisdiction to hold a de novo election by publishing fresh schedule of election of Board of the Bank.

18. In order to appreciate these issues, one has to look to the provisions of the Act of 2008 in order to find out what are the powers and duties of the Authority in a situation where the Returning Officer misconducts or ignores the statutory provisions deliberately. Whether the Authority would have no control in a situation like this and it would be debarred from taking any remedial action ?

19. Under the 97th amendment of the Constitution of India several incorporations were made. Part IXB of the Constitution of India deals with the Co-operative Societies. Article 243ZK under Part IXB reads as under :-

“243ZK. (1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of the members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a cooperative society shall vest in such an authority or body, as may be provided by the



Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such election.”

20. The provisions prescribed in Part IXB of the Constitution of India are with the object to promote the cooperative movement. In consonance with Article 243ZK of the Constitution of India, the Legislature of the State of Bihar has enacted the Act of 2008 to conduct election for constitution of the Managing Committee of all types of Cooperative Societies registered under the Bihar Co-operative Societies Act, 1935. The creation of the Authority has been made in order to ensure that the election of the Co-operative Society should be held expeditiously in free and fair manner and the Authority has been vested with the power of superintendence, direction and control of conduct of elections to Co-operative Societies.

21. Section 4 of the Act of 2008 stipulates that the Authority shall have power, authority and jurisdiction for exercising superintendence, direction and control of the preparation of electoral rolls for, and conduct of all elections to bodies such as Co-operative Societies, Shiksha Samiti or any other institution, organization, establishment, which may be entrusted to it by the State Government.



The said Section 4 of the Act of 2008 is akin to Article 324 of the Constitution of India, which provides that superintendence, direction and control of the conduct of election to Parliament and Legislature of every State shall be vested in the Election Commission.

22. Further Rule 7 of the Rules of 2008 stipulates that for the purpose of conduct of election or elections in an institution or establishment or organization or group of such bodies, the Authority shall take necessary action under the appropriate Act/Rules in force for such institution or establishment or organization or other bodies. For this purpose the Authority shall have powers to make arrangements by way of making regulation or/and regulations and/or by issuing executive instructions.

23. Thus, I find that having regard to the ground realities concerned with the duty to conduct, supervise and control over the election to the Managing Committee of the Board of the Co-operative Societies, the Authority has huge responsibility and in order to discharge those responsibilities, it has been vested with sufficient powers.

24. Rule 23(2)(d) clearly stipulates that no delegate/ representative of an affiliated society shall be eligible for election to the Managing Committee, if an enquiry relating to any transaction of the registered society to the Managing Committee of which he seeks



election is pending against him. Since the surcharge proceedings were pending against the respondent no.7, which was brought to the notice of the Returning Officer and despite having full knowledge about the surcharge proceedings and despite having received the guidance in this regard, which was sought for by the Returning Officer from the Authority, if the Returning Officer had accepted the nomination of the respondent no.7, I find no illegality in the action of the Authority whereby it has cancelled the notification for election of the Board of the Bank. Once I come to this finding, there is no difficulty in holding the subsequent action of the Authority in order to conduct the election of the Board of the Bank to be justified.

25. In the opinion of this Court, by virtue of the powers given under Section 4 of the Act of 2008, the Authority can exercise power to cancel the election before the result is declared and notify a fresh schedule of election in order to achieve the objective of free and fair election even if the Act of 2008 and the Rules made thereunder do not confer such power specifically to the Authority. Having due regard to the ground realities the Authority responsible to conduct, supervise and control free and fair election to the co-operative societies has rightly exercised its power under Section 4 of the Act in cancelling all the action taken pursuant to the earlier notification at the stage of nomination and notified a fresh schedule for holding



election of the Board of the Bank.

26. Now coming to the second issue raised by the petitioners in CWJC Nos. 1221 of 2018 and 1229 of 2018 to declare them uncontested on the ground that their nominations were found valid by the Returning Officer, I am of the considered opinion that such a prayer cannot be allowed. Firstly because the Authority has cancelled all the actions taken by the Returning Officer pursuant to the earlier notification which would mean that the action of acceptance of their nomination also stood cancelled. Secondly because the nomination of respondent no.7 in CWJC No. 1221 of 2018 was accepted as valid by the Returning Officer. Hence, the petitioner in CWJC No. 1221 of 2018 by no stretch of imagination could have been declared elected uncontested. Thirdly because the writ Court cannot issue a mandamus to declare a person, who has filed nomination, to be elected even before the completion of election process.

27. In view of the discussions made above, the prayer of the petitioner in CWJC No. 1533 of 2018 whereby he has sought for a direction to be issued to the Authority to proceed with the notified election from the stage the same was stopped and conduct the election accordingly cannot be allowed. As far as the reliance placed by the learned counsel for the respondent no.7 in CWJC No. 1221 of 2018 (petitioner in CWJC No. 1533 of 2018) on the decision in *Md.*



Shamim (Supra) is concerned, the ratio of that case would not be applicable in these cases as facts of that case are quite distinguishable from the facts of the present case. In case of *Md. Shamim* (Supra), the petitioner had prayed for quashing the order dated 09.10.2017 passed by the Returning Officer whereby and whereunder he had rejected the nomination paper filed by the petitioner to contest the election of Vyapar Mandal for the post of Chairman on the ground that the Society of which the petitioner was the Chairman was defaulter of Bank. Another prayer of the petitioner was for directing the Returning Officer to accept his nomination to contest the election of the Chairman for the Vyapar Mandal. Thus, the action of the Returning Officer by which nomination of the petitioner was rejected was under challenge in that case. After examining the statutory provisions and the mandate of Constitution, this Court in the case of *Md. Shamim* (Supra) held that the issue of illegal rejection of nomination of the petitioner and declaration of result of contesting respondent can only be challenged by filing an election petition. However, in the present case, the issue is quite different. Here the Authority itself has cancelled the actions taken by the Returning Officer pursuant to the notification made earlier and published a fresh schedule of election. Since I have already held that the Authority has jurisdiction under Section 4 of the Act of 2008 to take such decision



in order to secure free and fair election, no illegality can be found with the decision of the Authority.

28. In that view of the matter, I see no merit in these writ petitions. Accordingly, these writ petitions are dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-04-2018
Transmission Date	

