

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5914 of 1994

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Ramdeo Pd. Singh Son of Late Turant Singh, Advocate and ex-Secretary,
Tirhut Grih Nirman Sahyog Samittee, Madhubani, P.S. and District –
Madhubani.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Registrar Co-operative Societies, New Secretariat Building, Patna.
3. Additional Registrar, Co-operative Societies, Bihar, Patna.
4. Joint Registrar Co-operative Societies, Darbhanga.
5. District Auditor, Madhubani, District Madhubani.
6. Assistant Registrar, Co-operative Societies Madubani, District Madhubani.
7. District Certificate Office Cum Collector, Madhubani, District Madhubani.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Shankar Pradhan, Sr. Advocate Mr. Ranjeet Choubey, Advocate Mr. Jainandra Kumar, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

18 07-01-2019 The present writ application has been preferred for setting aside the order dated 19.04.1994 (Annexure-10 to the writ application) passed by the Additional Registrar, Co-operative Societies, Bihar, Patna in Revision Case No. 9 of 1989 by which the revision application preferred by petitioner against the order dated 11.10.1988 (Annexure-6) has been rejected and by virtue of the rejection of the revision application a certificate proceeding came to be initiated against the petitioner for realization of an amount of Rs. 50,392/-. Petitioner has also challenged the entire certificate proceeding including the notice



issued by respondent no. 7 to show cause in the certificate proceeding.

Mr. R.S. Pradhan, learned Senior Counsel representing the petitioner submits that the revisional order (Annexure-10) is liable to be quashed on the ground that the Additional Registrar could not appreciate that the impugned order (Annexure-6) was passed by the Joint Registrar without affording a proper opportunity of hearing to the petitioner. Learned Senior Counsel has further submitted that the revisional order is also bad in law for non-consideration of the materials available on the record. He has pointed out that the revisional authority has wrongly recorded in the impugned order that there was no order of stay of the audit by the District Audit Officer, Madhubani. It is pointed out that Annexure-1 to the writ application is a communication addressed to the District Audit Officer, Co-operative Societies, Madhubani. By this communication, the Joint Registrar, Co-operative Societies had requested him that till further order the audit work of the said Samiti be kept stayed, but despite this direction issued vide Memo No.1196 dated 26th September, 1987 the audit was continued and vide Annexure-2 dated 23.02.1988 a audit report was submitted in which a sum of Rs. 9,000/- was allegedly



found recoverable from petitioner. Learned Senior Counsel submits that there is no denial of the fact that the petitioner had appeared before the Joint Registrar on 29.08.1988 and filed a time petition which was allowed but thereafter due to strike of non-gazetted employee w.e.f. 06.09.1988 throughout the State, which was continued for a pretty long time, the petitioner could not file any show cause and in absence of show cause the impugned order was passed on 11.10.1988 which was communicated to the petitioner vide letter as contained in Annexue-6 to the writ application after 8th December, 1988 when the strike was over. It is submitted that on these two grounds, the impugned orders are liable to be set aside by this Court.

On the other hand, learned Senior Counsel representing the State submits that from Annexure-1 to the writ application it would appear that it refers to the order passed by the Departmental Minister, but according to the District Audit Officer the Departmental Minister had no authority to direct stay of the on-going audit. In Paragraph-7 of the counter affidavit a statement has been made that the Minister has no jurisdiction under the Act to stay the audit and this aspect has been dealt with by the Additional Registrar in his order dated



19.04.1994. As regards the submission that no adequate opportunity was given to the petitioner to represent his case and the order was passed during the strike period, learned counsel representing the State accepts that in the counter affidavit, in fact, there is no reply to the statement made in Paragraph-11 of the writ application and, therefore, the same has not been refuted on record.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that impugned orders are liable to be quashed on the ground of violation of the principles of natural justice alone. A specific statement has been made in Paragraph-11 of the writ application saying that the petitioner had appeared in the case before the Joint Registrar on 29.08.1988 and had prayed for one month time to file his show cause and then the same was allowed by the Joint Registrar has not been denied. It is also not denied that the case was fixed on 20.09.1988 for filing show cause but before that the strike of non-gazetted employees commenced w.e.f. 06.09.1988 throughout the State and, therefore, the petitioner had no opportunity to participate in the on-going proceeding. It is also no denial that the impugned order was passed by Joint Registrar during the strike period on 11.10.1988



and the same was communicated to the petitioner vide letter dated 08.12.1988 after the strike was over.

As regards the stay of the audit vide Annexure-1 is concerned, the said letter has been issued under the seal and signature of the Joint Registrar and it is not in dispute that by this letter (Annexure-1) the audit was stayed till further order. The contention of the learned counsel for the State that the Minister had no authority to stay on-going audit would have been a subject matter of consideration in course of hearing of the surcharge proceeding, if the petitioner would have been given an opportunity to represent his case, but unfortunately that was not done and the order was passed in the surcharge proceeding in absence of the stand of the petitioner.

In the given facts and circumstances of the case, in the opinion of this Court, the orders as contained in Annexure 6 and 10 are liable to be quashed and are quashed accordingly. Now, the surcharge proceeding shall be concluded by the Joint Registrar, Co-operative Societies, Darbhanga (respondent no. 4) within a reasonable time after giving an appropriate opportunity to the petitioner to place his stand. It is expected that the petitioner shall cooperate in early disposal of the case and shall not delay the proceeding by seeking unnecessary adjourments.



The writ application is disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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