

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23631 of 2018

Ranjan Kumar Singh, son of Late Rajendra Prasad Singh, resident of village – Dashwat Khap, P.O. and P.S. - Madanpur, District – Aurangabad, presently residing at M-3/26, Sri Krishnapuri, Near Basawan Park, P.O. - G.P.O., P.S. Sri Krishnapuri, district – Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna.
 2. The Registrar, Cooperative Societies, Bihar, Patna.
 3. The Deputy Registrar (Cane), Cooperative Societies, Bihar, Patna.
 4. The District Magistrate, Aurangabad-cum-Election Officer Officer.
 5. The Senior Deputy Collector, Aurangabad-cum-Election Officer (District Central Cooperative Bank), Aurangabad.
 6. The Bihar State Election Authority through its Secretary, 32, Harding Road, Patna.
 7. Sri Ram Sharma, Son of not known to the petitioner.
 8. Mahendra Prasad Singh, son of not known to the petitioner.
 9. Ramanuj Singh, son of not known to the petitioner.
 10. Abhiram Prasad, son of not known to the petitioner.
 11. Neetu Kumari, wife of not known to the petitioner.
 12. Vinod Kumar, son of not known to the petitioner.
 13. Rajendra Gupta, son of not known to the petitioner.
 14. Piyush Ranjan, son of not known to the petitioner.
 15. Anand Kumar Singh, son of not known to the petitioner.
 16. Gopal Choudhary, son of not known to the petitioner.
- Respondent nos. 7 to 16 at the Headquarters of Central Cooperative Bank Limited, Aurangabad, P.O. and P.S. Aurangabad, District – Aurangabad.
17. Sanjay Kumar Singh, son of Krishnanandan Singh, resident of village – Harvansha, P.O. Lahsa, P.S. - Pauthu, District – Aurangabad.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. S.B.K .Mangalam, Advocate Mr. Rajeev Kumar Singh, Advocate Mr. Mukesh Kumar Singh, Advocate Mr. Anjani Kumar, Advocate Mr. Nikhil Kumar, Advocate
For the Respondent/s	:	Mr.Kamal Nayan Choubey, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 07-01-2019



The petitioner in this writ application has questioned the judgment and order dated 19.11.2018/23.11.2018 passed by the learned Deputy Registrar (Cane), Cooperative Societies, Bihar Patna in Election Case No. 92 of 2018. Since the appeal preferred by the petitioner against the order of the Deputy Registrar before the Registrar, Cooperative Societies, Bihar Patna was held not maintainable vide order dated 04.12.2018, the same has been challenged subsequent to filing of the writ application by filing I.A. No. 9737/2018. This court has been given to understand by learned counsel for the petitioner that for purpose of disposal of the case no notice is required to be issued to the private respondent nos. 7 to 16 because the contest is in fact between the petitioner and respondent no. 17. Respondent no. 17 has already appeared and has filed a counter affidavit which is available on the record. The matter was mentioned on urgent motion and the same has been taken up with the consent of the parties for final disposal.

Brief facts

2. It transpired in course of hearing that the matter pertains to the election to the post of Chairman of the District Central Cooperative Bank Limited, Aurangabad. Election for the said post was held on 05.04.2018. The petitioner as well as respondent no. 17 had earlier filed their nomination papers before



the Sub-Divisional Officer, Aurangabad, who was the Returning Officer to conduct the election. As per the notified schedule by the State Election Authority, 09.01.2018 was the date fixed for scrutiny of nomination papers. In course of scrutiny twelve nominations were accepted as not opposed and no objection was filed with respect thereto. It is the nomination paper of respondent no. 17 which was objected to by the present writ petitioner.

3. As a ground to object the nomination of respondent no. 17 the writ petitioner submitted that respondent no. 17 is disqualified to contest the election in view of the provisions contained in Rule 23(2)(d) of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as the “Rules of 1959”) because a surcharge proceeding has been allegedly initiated against the respondent no. 17 in the court of Joint Registrar, Cooperative Societies, Magadh Division, Gaya being Surcharge Case No. 16/2014-15. It was also submitted that in the nomination papers respondent no. 17 has concealed this fact that he was facing a surcharge proceeding. The writ petitioner claimed that since the motive of Returning Officer was not in tune with the provisions of the Rules and he was not taking any decision, therefore the writ petitioner sent his objection to the Bihar State Election Authority (respondent no. 6). It is pointed out that ultimately respondent no.



6 came out with a letter No. 31 dated 10.01.2018 (Annexure-P/6) wherein the Returning Officer was communicated that in terms of Rule 23(1) and 23(2) of the Rules of 1959, if a person is facing a surcharge proceeding relating to a registered society, he cannot contest the election.

4. In the light of Annexure-P/6 the Returning Officer considered the objection submitted by the writ petitioner and the reply of respondent no. 17 whose submission was that since no surcharge proceeding was pending against him his nomination papers cannot be rejected. Respondent no. 17 explained to the Returning Officer that the proposal for initiation of a surcharge proceeding was submitted only against three persons namely, (1) Sri Shyama Charan Sinha (2) Sri Sanjay Kumar Sinha (not this respondent no. 17) and (3) Sri Ram Bihari Singh, but while passing the order dated 28.10.2015/09.11.2015 the Joint Registrar, Cooperative Societies, Magadh Division, Gaya had held the entire managing committee including the Managing Director and the present Managing Director guilty of misappropriation and had accordingly allowed the surcharge proceeding with amendments and directed for recovery of the amount.

5. It was also informed to the Returning Officer that the said order dated 28.10.1995 (Annexure-17) was challenged before



the appellate authority being the Minister, Cooperative Societies, who vide his order dated 08.05.2017/24.07.2017 doubted the correctness of the order passed by the Joint Registrar, as according to the appellate authority, because the officers/staffs against whom materials were found in the Special Audit Report were left free and the staffs/officers against whom there was no proposal to initiate surcharge proceeding and no material was collected in the special audit have been burdened with the recovery of the amount by passing a surcharge order, it raises doubt and suspicion as to the order passed by the Joint Registrar. In the operative part of his order the appellate authority recorded as under:

“ऐसी स्थिति में सम्यक विचारोपरांत यह न्यायालय इस अधिभार अपील वाद में संयुक्त निबंधक, सहयोग समितियाँ द्वारा पारित आदेश दिनांक 28.10.15/05.02.15 पर तत्काल प्रभाव से रोक लगाते हुए सम्पूर्ण मामले को संयुक्त निबंधक, सहयोग समितियाँ, मगध प्रमंडल, गया को नये सिरे से सुनवाई कर पुनः आदेश पारित करने का निदेश देती है ।”

6. The Returning Officer went into the detail submissions of the petitioner as well as respondent no. 17 and vide his order dated 09.01.2018 as contained in Memo No. 11 dated 10.01.2018 (Annexure-7 to the writ application) rejected the objection of the present writ petitioner and accepted the nomination papers of respondent no. 17.



7. It appears that the writ petitioner lodged a complaint before the District Officer-cum-District Election Officer, Aurangabad on 10.01.2018. His contention was that the Sub-Divisional Officer, Aurangabad had wrongly and arbitrarily accepted the nomination of respondent no. 17. His submission was that the election authority had vide Annexure-P/6 dated 10.01.2018, held that in view of the provisions contained under the Rules of 1959, the petitioner could not have participated in the election but the S.D.O. cum Returning Officer had passed the order accepting the nomination in violation of the order of the election authority.

8. It further appears that on receipt of the complaint of the writ petitioner, on the same day the District Magistrate, Aurangabad cum District Election Officer wrote a letter dated 10.01.2018 (Annexure-P/9) to the Chief Election Officer and recommended for taking appropriate action thereon. He gave a *prima facie* view that the Sub-Divisional Officer cum Returning Officer, Aurangabad had violated the guidelines of the election authority and the rules on the subject. On receipt of the letter dated 10.01.2018 (Annexure-P-9), the Chief Election Officer came out with notification dated 11.01.2018 (Annexure-P-10) by which he



cancelled the entire election process for election of the Board of Directors of District Cooperative Bank, Aurangabad.

9. It appears that after cancellation of the election process the Returning Officer was changed and this time in place of the Sub-Divisional Officer one Senior Deputy Collector was made Returning Officer. Once again, respondent no. 17 submitted his nomination papers and the writ petitioner objected to the same. On the same day, i.e., on 27.03.2018 the Returning Officer rejected the nomination papers of respondent no. 17. A copy of the order of the Returning Officer is available at Annexure-P-11 of the writ application. A perusal thereof shows that in two paragraphs the submissions of both the parties have been recorded and then in one line the nomination paper of respondent no. 17 has been rejected by the Returning Officer.

10. After rejection of the nomination papers of respondent no. 17 the writ petitioner was declared elected to the post of Chairman, District Central Cooperative Bank Limited, Aurangabad. Respondent no. 17 challenged the election of the writ petitioner giving rise to Election Case No. 92/2018 in the court of Joint Registrar which was later on transferred to the Deputy Registrar (Cane), Cooperative Societies, Bihar, Patna.



11. A prayer was made on the ground stated in Section 12(1)(c) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the “Act of 2008”) which prescribes the improper rejection of nomination paper of any candidate a ground to declare the election of the returned candidate to be void. The Deputy Registrar took note of the submission of the parties and in ultimate analysis came to a conclusion that the Returning Officer could not appreciate the provisions of Section 40 of the Bihar Cooperative Societies Act, 1935 as also the relevant judicial pronouncements on the subject and had deprived the respondent no. 17 (election petitioner) from contesting the election to the post of Chairman, hence the election to the post of Chairman was held to be void and direction has been issued to conduct a fresh election for the said post.

12. The order passed by the Deputy Registrar (Cane) as contained in memo no. 10217 dated 23.11.2018 (Annexure-P-15) was challenged before the Registrar (Cooperative Societies) vide appeal case No. 165/2018 but the same has been dismissed vide order dated 04.12.2018 holding that no appeal would lie in this case against the order as contained in Annexure-P-15. The Registrar, Cooperative Societies has relied on Section 13(2) of the Act of 2008 and the judgments of this court in CWJC No.



22343/2011, LPA No. 250/2013 and LPA No. 339/2013, copies of which are annexed with the counter affidavit of respondent no. 17.

Submissions of the Petitioner.

13. Mr. S.B.K. Mangalam, learned counsel representing the petitioner has raised two fold submissions for consideration by the writ court. His first submission is that Annexure-P-15 is fit to be quashed and cancelled on the ground of violation of principles of natural justice inasmuch as the Deputy Director (Cane) refused to grant an adjournment on 19.11.2018 when the writ petitioner was unable to put his appearance due to bereavement in his family. It is submitted that father of the writ petitioner had died and he was engaged in the Shradh Karm and this fact was duly communicated to the Deputy Registrar (Cane) but he did not adjourn the matter and fixed the case for filing of written notes of argument till 22.11.2018, and then passed the order on 23.11.2018.

14. The second argument of Mr. Mangalam is on the merit of the case. It is submitted that on 27.03.2018 when the nomination papers of respondent no. 17 was being scrutinized he was facing a surcharge proceeding, therefore his nomination papers were rightly rejected by the Returning Officer cum Senior Deputy Collector. In this connection learned counsel has referred the order dated 28.10.2015/05.12.2015 (Annexure-17) passed by



the Joint Registrar, Cooperative Societies, to show that in the concluding part of his order he had held that all the members of the Managing Committee/Board of Directors were guilty of surcharge. Learned counsel submits that no doubt the appellate authority had stayed the order as contained in Annexure-P-15 and had directed for a fresh consideration of the matter from beginning but fact remains that after the said order of the appellate authority, the Joint Registrar had initiated the surcharge proceeding and notices were issued to all concerned vide order dated 02.01.2018. It is also submitted that the respondent no. 17 had appeared in the said case on 06.01.2018 and the matter was fixed for another date. On 24.02.2018, the case was fixed for further hearing on 28.03.2018. It is thus submitted that in view of the surcharge proceeding against the respondent no. 17 he could not have contested the election and no fault may be found with the rejection of his candidature by the Returning Officer cum Senior Deputy Collector vide Annexure-P-11.

15. In the writ application, although a plea has been raised on behalf of the writ petitioner that the Deputy Registrar (Cane) was not conferred with power under Sub-section (2)(b) of Section 6 of the Cooperative Societies Act and in any case respondent no.2 even in exercise of power under sub-section (4) of



Section 6 of the Act could not have authorized a Deputy Registrar to decide an election petition filed under Section 48 of the Act, in view of the provisions of sub-section (4) of Section 6 of the Act, in course of hearing of the writ application Mr. Mangalam has not pressed this point for consideration. It is submitted that on aforesaid two grounds the impugned order (Annexure-P-15) is liable to be held bad in law and be set aside accordingly.

Submissions of Respondent No. 17

16. Respondent no. 17 has been represented by Mr. Kamal Nayan Choubey, learned Senior Counsel assisted by Mr. Rakesh Kumar Jha.

17. While opposing the writ application, learned Senior Counsel submits that the contention of the petitioner that vide Annexure-P-6, the election authority had held that the petitioner would not be entitled to contest the election is a baseless submissions. Referring to Annexure-‘6’ it is pointed out that it nowhere discusses the case of the parties. The letter (Annexure-P-6) simply communicates the provision of law on the subject, and therefore the petitioners are not correct in submitting that the election authority had given its opinion with regard to the eligibility of respondent no. 17 to contest the election. Learned Senior Counsel further submits that the then Sub-Division Officer



who was the Returning Officer had passed a reasoned order but then by taking the then District Magistrate, Aurangabad in his fold a letter was addressed to the election authority in which the District Magistrate for no reason recorded his *prima facie* opinion and sent the same hurriedly to the election authority. The election authority thereafter cancelled the election process without assigning any reason.

18. Learned Senior Counsel submits that it was a clear attempt to deprive the respondent no. 17 from contesting the election. Once the nomination papers of the respondent no. 17 was held to be valid and was accepted by the Returning Officer, the District Magistrate, Aurangabad could not have intervened on the basis of an *ex parte* complaint of the writ petitioner and there was no reason for him to form a *prima facie* opinion. Further the election authority interfered with the ongoing election process by cancelling the same for no reason at all shown in the letter (Annexure-P-10) dated 11.01.2018.

19. Learned Senior Counsel further submits that Private Respondent nos. 8 to 11 were also members of the erstwhile Board/Managing Committee. If the contention of the writ petitioner is taken to be correct and it was his objection that Respondent no. 17 was facing a surcharge proceeding then there



was no reason why he did not object to the nomination of Respondent No.8 to Respondent No. 11. The Returning Officer had accepted the nomination papers of Respondent No.8 to Respondent no. 11.

20. Learned Senior counsel further submits that when the fresh election process was initiated, this time a Senior Deputy Collector was made Returning officer who accepted the objection of the writ petitioner and rejected the nomination papers of respondent no. 17 without giving any reason thereof. He has invited the attention of this court towards the order dated 27.03.2018 (Annexure-P-11) by which the nomination papers of respondent no. 17 was rejected. Learned Senior Counsel submits that the rejection of the nomination papers was not result of an independent exercise of mind by the Returning Officer rather it was a result of a prejudiced mind exercised by him. It is further submitted that the Election Commission had earlier issued an advisory to all the Returning Officer not to reject any nomination paper unless they are sure of the ground of rejection as legally sustainable. It is submitted that the law also mandates that in case of rejection of nomination paper, the Returning Officer had to record in writing a brief statement of his reason for rejecting the same but this was not done in the case of respondent no. 17.



21. Contesting the submissions of Mr. Mangalam, learned Senior Counsel representing the respondent no. 17 submits that the allegations of violation of principles of natural justice is not just and proper in the given facts and circumstances of the case. Learned Senior Counsel submits that on perusal of the impugned order (Annexure-P-15) it would appear that several dates were fixed in the matter after filing of the case on 22.05.2018. On 26.06.2018, 21.08.2018 and 20.09.2018 the dates were fixed but no show cause reply could be submitted on behalf of the opposite parties. The case was then fixed for hearing on 03.10.2018, on the said date neither the opposite party appeared nor his reply could be filed. Time was granted to the opposite party to submit his reply but again on 24.10.2018 neither the opposite party appeared nor any show cause was filed. Despite this, once again the case was fixed for 31.10.2018 for hearing, on the said date one Advocate appeared on behalf of the opposite party no. 4 but no show cause was filed on his behalf. On 05.11.2018, the show cause was filed on behalf of opposite party no. 4 and a prayer was made for fixing a date for hearing on 19.11.2018 so that a Senior Counsel may argue the matter. On 19.11.2018 on the oral prayer of learned counsel for opposite party no. 4 time was



granted till 22.11.2018 (4.00 P.M.) for filing of his written notes of argument, but no written notes of argument was filed.

22. In this circumstances, learned Senior Counsel submits that it cannot be argued on behalf of the writ petitioner that no proper opportunity of hearing was given to him. It is submitted that even though the petitioner was engaged in Shradh karm of his father, the fact remains that his Advocate had appeared and prayed for time till 22.11.2018 for filing written notes of argument, and therefore sufficient time was granted to his Advocate to file a written notes of argument which was not availed by him.

23. On merit, as regards the pendency of the surcharge proceeding, learned Senior Counsel submits that a bare perusal of the proposal (Annexure-R/17/D), it would appear that the surcharge proposal was sent against only three persons namely Shyama Charan Sinha, the then Chairman, Sri Sanjay Kumar Sinha, Assistant Manager (Not the respondent no. 17) and one Ram Bihari Singh. It is submitted that it was a mere proposal and in view of the judgment of this court, copies of which are available on the record, a proposal for initiation of surcharge culminates in initiation of surcharge proceeding only after an opportunity of hearing is given to the persons against whom surcharge proceeding



has been proposed. He has referred the judgment of this court in CWJC No. 8579/2009 and has drawn attention of this court towards the procedures explained in the said case in the matter of initiation of a surcharge proceeding.

24. In this connection, reliance has been placed on the submission of learned Government Advocate No. 1 in CWJC No. 3089/2013. Copies of these judgments are Annexure R/17-G(series). The learned Senior Counsel submits that since the name of this respondent no. 17 was not there either in the Special Audit Report or in the surcharge proposal, the Joint Registrar while passing the order on 23.10.2015 (Annexure-17) had clearly erred in holding the entire Managing Committee including this petitioner guilty of surcharge. This order was challenged in appeal before the departmental Minister who had vide order dated 08.05.2017 (Annexure-P/18) stayed the order of the Joint Registrar and then directed a fresh consideration of the surcharge proceeding right from beginning. Thus, the fresh consideration was to be given from the stage of the surcharge proposal and in the surcharge proposal this petitioner was not named.

25. It is thus submitted that on 02.01.2018 when the notice was issued to all concerned in the surcharge proceeding No. 16/2014-15, it cannot be said that this petitioner was facing a



surcharge proceeding. The surcharge proceeding was to be considered from the stage of proposal and since there was no proposal against this petitioner, he had submitted before the Joint Registrar that no surcharge proposal has been sent against him, there was neither any material against him in the special audit report nor he can be said to be facing a surcharge proceeding. This fact has been recorded in the order dated 24.02.2018 passed by the Joint Registrar, copy of which is available at Annexure-P-19. It is reiterated that there was no reason for the Returning Officer to discriminate against Respondent No. 17 where nomination of similarly situated Respondent No. 8 to Respondent No. 11 were accepted.

26. It is thus submitted that ouster of respondent no. 17 on the ground that he was facing a surcharge proceeding was nothing but an illegal and arbitrary exercise of power by the then Returning Officer who was appointed as Returning Officer after removing the earlier Returning Officer who had accepted the nomination of Respondent No. 17 in the first round and all these fresh exercise were taken with a pre-conceived mind to deprive respondent no. 17 from contesting the election. Although learned Senior Counsel has referred his reply with regard to the competence of the Deputy Registrar but because no challenge has



been taken to the competence aspect of Deputy Registrar (Cane), the learned Senior Counsel for the respondent no. 17 has also not adverted to the same.

27. At last learned Senior Counsel has drawn the attention of this court towards the second proviso to sub-section (1) of Section 40 of the Act of 1935 and submits that in any view of the matter after expiry of three years from the date of submission of surcharge proposal no order under Section 40 may be passed by the Joint Registrar. It is submitted that the proposal in the present case as against those three persons were submitted on 09.12.2014, therefore the three years period expired on 09.12.2017 and hence no surcharge proceeding at all can continue thereafter.

28. Learned counsel for the State as well as the State Election Authority are present, however in the nature of contest between the petitioner and respondent no. 17 they have not much role to play.

Consideration

29. Having heard learned counsel for the parties and upon perusal of the records, I find force in the submission of learned Senior Counsel representing the respondent no. 17. As regards the allegation of violation of principles of natural justice, perusal of the order passed by the Deputy Registrar (Cane) as



contained in Annexure -P-15 shows that the case was filed on 22.05.2018 and thereafter on at least six dates the matter was adjourned awaiting appearance and filing of show cause by opposite party no. 4 (the present writ petitioner). It is only thereafter that opposite party no. 4 appeared through his advocate on 05.11.2018 and filed his show cause. It was opposite party no. 4 who was the main contestant as even in this writ. Learned counsel for the petitioner has submitted that Private Respondent nos. 7 to 16 are only proforma respondents. At the instance of learned counsel for opposite party no. 4 the matter was adjourned for 19.11.2018. On the said date the learned counsel representing opposite party no. 4 is said to have made a prayer for adjournment but it was rejected and he was granted time till 22.11.2018 to file his written notes of argument. It is the case of the petitioner that he was engaged in the Shardh Karm of his father and therefore he was unable to appear on the said date, the case was then fixed for hearing on 22.11.2018. On the said date also a request for adjournment was made but on 22.11.2018 learned counsel was told that he was granted permission only to file written submission and there was no question of any adjournment.

30. This court is of the *prima facie* opinion that the case was being adjourned on several dates to enable opposite party no.



4 to appear and file his show cause. He had filed his show cause on 05.11.2018 and was being represented through his Advocate. The learned Advocate who was representing opposite party no. 4 was present and had not expressed any personal difficulty in arguing the matter. Even if the writ petitioner was engaged in Shradh Karm due to bereavement in his family, he was well represented through his Advocate and there was no impediment for the learned Advocate in arguing the matter or filing of a written notes of argument within the time granted by the court.

31. In these circumstances, it cannot be said to be a glaring case of violation of principles of natural justice. The stand of opposite party no. 4 was very well available on record and it is not his case that the Deputy Director (Cane) has not looked into his reply. After a careful consideration given to the submissions of Mr. Mangalam as regards the violation of principles of natural justice this court did not get much convinced and took a view that this ground alone may not be sufficient to set aside the impugned order unless the court is *prima facie* convinced that it has resulted in gross injustice to the writ petitioner. In order to satisfy itself with such a situation the court called upon the parties to address their respective case on merit and when the arguments were canvassed, this court took a view that by giving a detail hearing to



the writ petitioner at this stage and thereby disposing the case itself on merit the court would be doing complete justice. Thus, the ground as regards violation of principles of natural justice alone has not found favour with the court and the court proceeds to dispose of the matter on its own merit.

32. On merit, it is not in dispute that the proposal for initiation of a surcharge proceeding has been submitted vide Annexure-R/17/D available in the counter affidavit of respondent no. 17. The proposal contains only three names. This petitioner is not named therein though one Mr. Sanjay Kumar Sinha a similarly named person is there but he happened to be the Assistant Manager against whom the surcharge proposal was moved. This court finds that at the time of final order on 23.10.2015 (Annexure-P-17) the Joint Registrar, Cooperative Societies had recorded that all the members of the Managing Committee/Board of Directors are guilty of surcharge but then the appellate authority raised a strong doubt over the correctness of the said order when it says in the appellate order (Annexure-P/18) that exonerating the staffs/officers against whom there were materials in the special audit report and then imposing the surcharge amount against those staffs/officers with respect to whom there is no material in the special audit report and there was no surcharge proposal raises a



doubt on the correctness of the order. The appellate authority stayed the operation of the order dated 28.10.2015/05.02.2015 and directed the Joint Registrar, Cooperative Societies, to hear the matter afresh from beginning and pass an appropriate order. Learned counsel for the petitioner has in fact submitted that it is a remand order and the Joint Registrar is now required to hear the matter afresh.

33. Thus, there is a force in the submission of learned senior counsel for the respondent no. 17 that once the Joint Registrar has been directed to hear the matter afresh and from beginning, it has to be heard from the stage of submission of the surcharge proposal and in the surcharge proposal respondent no. 17 is not named. This court finds itself in agreement with the submission of learned senior counsel that by virtue of the appellate order now the order as contained in Annexure-P-17 has lost its effect and efficacies and no surcharge proposal as on date is pending against the respondent no. 17. This court also agrees that issuance of notice to all concerned on 02.01.2018 vide Annexure-19 series cannot be construed as pendency of a surcharge proceeding against the respondent no. 17. In fact respondent no. 17 has made it clear on 24.02.2018 itself to the Joint Registrar that there is no surcharge proposal against him, this fact has been



recorded in the order of the Joint Registrar. The Returning Officer has accepted the nomination papers of respondent no. 8 to respondent no. 11 who were similarly situated, there was no reason to construe the whole matter otherwise to prevent respondent no. 17 from contesting the election.

34. Under these circumstances on 27.03.2018 when the nomination papers of respondent no. 17 were being scrutinized, in the opinion of this court the Returning Officer could not have rejected the nomination papers of respondent no. 17. This court has perused the order passed by the Returning Officer rejecting nomination papers of the respondent no. 17, as contained in Annexure-P-11, and finds that in fact the nomination papers of respondent no. 17 were rejected on mere asking without recording any note or reason as to why the Returning Officer while accepting other nominations rejected the nomination papers of respondent no. 17.

35. Since this court has come to a conclusion that by virtue of the remand now the Joint Registrar is required to proceed from the stage of surcharge proposal submitted to him and in the surcharge proposal respondent no. 17 is not named, the court is not required into going into the another submission of learned senior counsel for respondent no. 17 that by virtue of second proviso to



sub-section (1) of Section 40 of the Act of 1935 now no order may be passed in the surcharge proceeding. Such argument would however be left open for the petitioner and the persons who are named in the surcharge proposal if occasion so arise.

36. In result, this court does not find any illegality or infirmity with the order passed by the Deputy Registrar (Cane), Cooperative Societies and the appellate order as contained in Annexure-P-15 and P-22 respectively.

37. The writ application is devoid of merit and is being dismissed accordingly.

38. I.A. No. 9737 of 2018 stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.01.2019
Transmission Date	

