

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18115 of 2018

Vijay Vatsyayan son of Late Parmanand Singh Madan, Resident of House No. 221, Village - Chhatauna, P.S. Samastipur Muffasil, District - Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department, New Secretariat, Bihar, Patna.
2. The Registrar Co-operative Society, Bihar, Patna.
3. The Deputy Registrar (Sugarcane), Co-operative Societies, Bihar, Patna.
4. The Bihar State Co-operative Bank Ltd. Ashok Raj Path, Patna through its Managing Director.
5. The Managing Director, Bihar State Co-operative Bank Ltd. Ashok Raj Path, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Dipak Kumar, Advocate
For the Respondent/s : Mr.Uday Shankar Sharan Singh- Gp19

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 15-07-2019

The present writ application has been preferred for the
following reliefs :-

“(i). For issuance of an order, direction or writ in nature of certiorari quashing letter No. 1448 dated 12.02.2018 issued by Deputy Registrar (Sugarcane), Co-operative Society, Bihar, Patna whereby a direction has been issued to the managing director, Bihar State Co-operative Bank Ltd., Patna to disaffiliate the Tirhut Mithila Aam Lichi Utpadak Swablambi Sahkari Samiti Ltd. from the Bihar State Co-operative Bank Ltd.
(ii). For issuance of an order, direction or writ in nature of certiorari quashing Memo No.2674 dated 30.08.2018 whereby a show cause has been issued by the Managing Director Bihar State Co-operative Ltd. Patna asking to show cause as to why the said Tirhut Mithila Aam Lichi Utpadak



Swablambi Sahkari Samiti Ltd. be not disaffiliated from the Bank.

(iii). For issuance of a writ in nature of Mandamus directing the respondent authorities allow the petitioner (Chairman of the said Tirhut Mithila Aam Lichi Utpadak Swablambi Sahkari Samiti Ltd.) to function on the post of director of the Bihar State co-operative Bank Ltd. uninterruptedly without any let or endurance.

(iv). Any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of the case.”

Petitioner is the Chairman of one Tirhut Mithila Aam Lichi Utpadak Swawlambi Sahkari Samiti Ltd. (hereinafter referred to as ‘the Society’) registered under the Bihar Self Supporting Co-operative Societies Act, 1996 (hereinafter referred to as ‘the Act of 1996’). It is the case of the petitioner that the Society of the petitioner when tried to get affiliated to the Bihar State Co-operative Bank Ltd. (hereinafter referred to as ‘the Bank or the Apex Body’), the petitioner was asked to convert the Society in a State Level Society operational in the entire State of Bihar. The petitioner claims that he then moved before the department concerned seeking an amendment to convert the Society into State Level Society which was ultimately done by the Registrar. It is stated that in the year 2000 the Apex Body/Bank granted affiliation to the Society of the petitioner and thereafter the petitioner for the first time contested in the election held for the Director of the Board of



Directors of the Bank in the year 2013. The petitioner was declared elected. It is further case of the petitioner that one Vijay Kumar Singh preferred C.W.J.C. No. 1894 of 2013 before this Court challenging the very affiliation granted by the Bank to the Society on the ground that the Bank being registered under the Act of 1935 would not affiliate a Society registered under the 1996 Act. This Court vide its order dated 31.01.2013 held that since the election to the post of Directors had been declared, any dispute of the said nature had to be raised as an election dispute before the competent authority under the Act. Thereafter said Vijay Kumar Singh moved in election Society Case No. 32 of 2013 before the Registrar Co-operative Societies under Section 48 of the Act of 1935. Vide order dated 2/03.09.14 the election petition of said Vijay Kumar Singh was dismissed holding that the plea raised by the election petitioner that the petitioner's Society is not a State Level Society, is not correct in view of the amendment in the bye-laws of the said Society with respect to the area of operation which was certified and approved on 19.05.1999. Copy of the order dated 04.09.2014 passed by Registrar Co-operative Societies in the election dispute Case No. 22 of 2013 is Annexure '2' to the writ application.



It is stated that when the election process was under way in the year 2018 once again a similar objection was raised before the Deputy Registrar Co-operative Societies, Bihar, Patna and this time vide Letter No. 1448 dated 12.02.2018 directions were issued to the Managing Director of the Bank to disaffiliate the Society in question after following the due procedure. A copy of Letter No. 1448 dated 12.02.2018 issued under signature of the Deputy Registrar (Cane) Co-operative Societies, Bihar is Annexure '3' to the writ application.

It is stated that on 12.04.2018 the petitioner was declared elected as Director of the Bank, thereafter vide Memo No. 2674 dated 30.08.2018 a show cause notice was issued to the petitioner to show as to why the Society in question will not be disaffiliated from the Bank. Copy of a show cause notice as contained in Memo No. 2674 dated 30.08.2018 is Annexure '4' to the writ application. The petitioner thereafter moved this Court and as the matter remained pending before this Court, the Board of Directors of the Bank (Respondent No. 4) vide Agenda No. 3 unanimously decided to disaffiliate the Society of which the petitioner is the Chairman. A true copy of the minutes of the meeting dated 17.09.2018 of the Board of Directors of Respondent No. 4 has been brought on record with I.A. No.



8357 of 2018 seeking to amend the writ application to quash the decision of the Bank as contained in the resolution dated 17.09.2018 vide Agenda No. 3 and the consequential communication issued vide letter reference No. 2892 dated 15.10.2018.

Learned counsel representing the petitioner submits that the disaffiliation of the Society of the petitioner is wholly illegal, arbitrary and bad in law. It is submitted that once vide order dated 04.09.2014 the election dispute raised in the year 2013 came to be dismissed taking note of the area of operation of the petitioner's Society, there was no reason to entertain a similar objection in the year 2018. It is submitted that the impugned resolution has been passed at the instance of the Registrar, Co-operative Societies which will be evident from the fact that in the Letter No. 1448 dated 12.02.2018 (Annexure '3') the Deputy Registrar (Cane) has stated "Nideshanusar". Learned counsel, therefore, submits that the impugned resolution of the Bank is fit to be quashed.

On the other hand, learned counsel representing the Respondent Nos. 4 and 5 submits that the writ petition is fit to be dismissed as it suffers from the vice of "*suppressio veri, suggestio falsi*". It is submitted that share of the Bihar State Co-



operative Bank Ltd. can only be held by the Central Co-operative Banks within the State and a State Level Co-operative Societies having area of operation in the whole State as per Section 8 of the bye-laws of the Bank. It is stated in their counter affidavit that the Chairman of Tirhut Mithila Aam Lichi Utpadak Swawlambi Sahkari Samiti Ltd. had first applied for affiliation with the Bank vide its Letter No. 12 of 1998 dated 14.10.1998. The Society was registered under the Act of 1996. The area of operation of the Society was not in the whole State so the application was rejected vide Bank's letter as contained in Annexure R-5/A, R-5/B and R-5/C.

It is further stated that the petitioner's Society had applied for affiliation with the Bank vide Letter No. 39 of 1999 with the record of area of operation mentioned as whole State of Bihar which was placed before the Administrator of the Bank on 14.01.2000 and it was approved by the Administrator. It was communicated to the petitioner's Society vide Letter No. 3241 dated 03.02.2000. The answering respondents have, however, pointed out that as per provisions of the bye-laws no. 45 of the bye-laws of the Bank one Director can be elected from the Society who represents State Level Co-operative Society and affiliated to the Bank. It is submitted that one Shambhoo Prasad



came with an allegation that the petitioner's Society not being a Society under the Act of 1935 could not have been affiliated with the Bank in the year 2000. The Registrar, Co-operative Societies had been requested for a direction and Registrar, Co-operative Societies had informed vide Letter No. 1418 dated 12.02.2018 that the affiliation of the Society with the Bank in the year 2000 was illegal.

It is submitted that in order to comply with the principles of natural justice a show cause notice vide Letter No. 1703 dated 05.03.2018 had been issued to the Society. The Society has submitted its explanation dated 08.03.2018 which was not in support of its affiliation being genuine and valid rather the Society questioned the authority who issued the show cause notice. The entire facts were placed before the newly constituted Board of Directors of the Bank vide Agenda item No. 13 on 28.08.2018. The Board of Directors in its meeting resolved to follow the principles of natural justice, therefore, again a show cause notice had been served vide Letter No. 2674 dated 13.08.2018. In response the Chairman of the Society (the petitioner) had submitted his explanation which was not in support of its affiliation being valid, genuine and according to the provisions of the bye-laws. It is submitted that in accordance



with the provisions of Rule 14(2) of the Bihar Co-operative Societies Rules, 1959 the petitioner's Society has been disaffiliated. It is submitted that the Board of Directors even referred the explanation submitted by the Society in response to the show cause notice No. 2674 dated 13.08.2018 and found that the explanations were unsatisfactory and affiliation of the Society was not in accordance with the provisions of the Act of 1935 and the bye-laws of the Bank. It is, thus, submitted that the Bank being an autonomous body has taken its decision and has disaffiliated the petitioner's society. An objection has also been taken against the writ application stating that it has not been filed by or on behalf of the 'Society' hence not fit to be entertained at the instance of the petitioner.

It appears from the records that two intervenors have also filed interlocutory application in this case, however, those have not been allowed by this Court earlier and, therefore, the contentions of the proposed intervenors are not being taken note of.

Having heard learned counsel for the petitioner and the respondents, this Court finds from the records that on 17.01.2019 this Court had passed an interim order directing stay of the resolution of the Bank taken on 18.09.2018 as contained



in Annexure '1' to the I.A. No. 8357 of 2008 and opportunity was granted to respondent nos. 4 and 5 to file a comprehensive counter affidavit. The counter affidavit was filed after serving the copy thereof on learned counsel for the petitioner as back as on 06.02.2019 but no rejoinder thereto has been filed on behalf of the petitioner. In the writ application the petitioner has himself stated that his Society is registered under Act of 1996. In these circumstances, this Court would first take note of the definition of the word 'Registered Society' and the "Affiliating Society" as contained in Section 2(h) and Section 2(o) of the Act of 1935 respectively which read as under :-

"2(h). 'registered society' means a society registered or deemed to be registered under this Act.

2(o). "Affiliating Society" means a registered society of which another registered society is a member; and "affiliated society" means a registered society, which is a member of an "affiliating society".

Chapter VI-D under the Act of 1935 was inserted by Act No. 18 of 2008 to incorporate certain special provisions applicable to the Societies in short term co-operative credit structure. Section 44(a)(y) provides for membership of an affiliating Society. It provides that a Co-operative Society under the short term co-operative credit structure registered under the Bihar Co-operative Societies Act, 1935 shall be eligible to be a



member of an affiliating Society registered under the provision of the Bihar Self Supporting Co-operative Societies Act, 1996 in accordance with the procedure to be prescribed and notified by the government. Similarly under Clause (b) of Section 44(a)(y) a Co-operative Society under the short term co-operative credit structure registered under the Bihar Self Supporting Co-operative Societies Act, 1996 may become the member of an affiliating Society registered under this Act in accordance with the procedure to be prescribed and notified by the government.

In the present case, however, the petitioner's Society got itself affiliated to the Apex Body/Bank in the year 2000 when Chapter VI-D was not in existence. It is in these circumstances action under Rule 14(2) of the Rules of 1959 have been taken for removal of the petitioner's Society from the membership of the registered Society/Apex Body/Bank.

In the writ application the petitioner has set up a case stating that since vide order dated 02/03.09.14 as contained in Annexure '2' to the writ application, the then Registrar, Co-operative Societies, Bihar had dismissed the election dispute Case No. 22 of 2013, the complaint once again entertained while the process of election was under way was only an attempt to remove the petitioner from the post of Director of the



Bank without raising any election dispute. This Court is, however, unable to get impressed with this argument on behalf of the petitioner for the reason that the petitioner having received the letter to show cause bearing No. 1703 dated 05.03.2018, vide his letter dated 08.03.2018 (Annexure 'R5/L') has not contested the stand of the respondents that in terms of the definition of the word 'registered Society' and the 'Affiliating Society' under the Act of 1935 as existing in the year 2000. The Society of the petitioner which was registered under the Act of 1996 could not have been a member of the Affiliating Society. The petitioner took a plea that in the final voter list from Serial No. 1-59 there are some societies who are not registered under the Act of 1935 but in respect of that why no explanation has been called for. In the counter affidavit the respondents have made a statement that one similarly situated UCO Bank Karmachari Sahyog Evam Bachat Swawlambi Samiti Ltd. has also been terminated and said Society has been disaffiliated vide letter No. 3021 dated 17.11.2018. A copy of the said letter has been enclosed as Annexure 'R5/P'. I, therefore, find that instead of making a positive statement in respect of his claim based on the provisions of the Act of 1935, the petitioner only chose to submit an explanation raising



question about the other similarly situated society which has been answered in the counter affidavit.

The petitioner has though challenged the communication as contained in letter No. 2674 dated 30.08.2018 as contained in Annexure '4' to the writ application, this Court finds from the pleadings in the writ application that the petitioner has not addressed himself on the stand of the respondents that even after amendment of 2008 in the Act of 1935 and incorporation of Section 44 therein, the induction of the Society of the petitioner has not been found legal and in accordance with law. The petitioner not having contested this either in his reply dated 11.09.2018 or in the writ application has virtually given up the contest on that issue.

One of the contentions on behalf of the respondents is that this being a case of disaffiliation of a society which is in the nature of a body corporate can sue or can be sued in its own name, the petitioner in his individual capacity cannot maintain this writ application that too without bringing on record any resolution of the society authorising the petitioner to challenge the impugned order. This Court finds force in the submission, however, in view of the fact that this writ application is to be disposed off on a pure question of law in the light of the



provisions of the Act of 1935 which have been argued and discussed hereinabove at length, this Court thinks it just and proper to decide the writ application on its own merit rather than ousting the petitioner at this stage on the ground of his authority to maintain this writ application.

In the light of the discussion made hereinabove, this Court finds no reason to interfere with the impugned order.

This writ application has, thus, no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	27.06.2019
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