IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8031 of 2020

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1. Sahendra Mandal Son of Late Thakur Mandal Resident of Village-Basa, PO-Bariarpur, P.S.-Bariarpur, Distt.-Munger. Secretary Bariarpur Prakhand Matsyajivi Sahyog Samiti Ltd. Bariarpur.
2. Bariarpur Prakhand Matsyajivi Sahyog Samiti Ltd. Bariarpur through its Secretary Sahendra Mandal (Male aged about 55 Years Son of Late Thakur Mandal, resident of Village-Barail Basa, Po and P.S.-Bariarpur, District-Munger

... ... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Co-operative department, Bihar, Patna.
2. The Registrar Co-operative Societies, Bihar, Patna.
3. The Joint Registrar Co-operative Societies, Bhagalpur Division, Bhagalpur.
4. The District Co-operative Officer, Munger.
5. The In-charte Block Co-operative Extension Oficer, Bariarpur, P.S.-Bariarpur, District-Munger-Cum-Administrator Bariarpur Prakhand Matsyajivi Sahyog Samiti Ltd. Bariarpur.

... ... Respondents

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Appearance :

For the Petitioner : Ms. Mahasweta Chatterjee, Advocate
For the Respondent State: Mr. P.N.Shahi, AAG-6
Mr. Mritunjay Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 09-11-2020

This writ application has been filed seeking quashing of an order dated 18.08.2020 (Annexure-6) issued by the District Co-operative Officer, Munger, whereby the In-charge Block Co-operative Extension Officer, Bariarpur in the district of Munger, has been appointed as the Administrator of Bariarpur Matasyajivi Sahyog Samiti Limited, Bariarpur (hereinafter to be referred to as 'the Society') till constitution of a fresh Managing Committee of the Society, in exercise of power under Section 41(5) of the District Co-operative Societies Act, 1935 (hereinafter to be referred to as ‘the Act’).

2. Brief facts of the case, as disclosed in the writ application, are that Managing Committee of the Society was elected by the Bihar State Election Authority on 30.06.2017, in which petitioner No.1 was declared elected as the Secretary/Treasurer of the Society. It is the case of the petitioners that the District Fisheries Officer had settled nine (09) fish *jalkars* in favour of the Society for three years by an order dated 11.09.2019, i.e., from 01.07.2019 to 30.06.2022. Subsequently, by an order dated 17.02.2020, the District Co-operative Officer, Munger, exercising his powers under Section 41 of the Act, suspended the Managing Committee of the Society for a period of six months and appointed the In-charge Block Co-operative Extension Officer, Bariarpur, as Special Officer of the Society for carrying out functions of the Society. The said order was passed after enquiring into certain allegations made against petitioner No.1 by a three-member enquiry committee. It is apparent from the order dated 17.02.2020 that the District Co-operative Officer had noted that seven members of the Managing Committee of the Society had tendered their resignation. Subsequently, on

09.08.2020, petitioner No.1 represented the District Co-operative Officer, Munger, with a request to revoke the order of suspension as cordial atmosphere amongst the members of the Managing Committee had been restored. The District Co-operative Officer, Munger, however, issued the impugned order dated 18.08.2020, noticing the fact that a meeting of the elected members of the Managing Committee was convened by the Block Co-operative Extension Officer, Bariarpur-cum-Special Officer to assess as to whether there was any desired improvement in mutual understanding of the members of the Managing Committee or not. The Block Co-operative Extension Officer had informed, through his letter dated 14.08.2020, that in the meeting, held on 14.08.2020, the President and four members of the Managing Committee did not present themselves and those, who had tendered their resignation, attended the meeting and expressed their dissatisfaction with the functioning of the petitioner No.1 as the Secretary. Noticing the aforesaid aspect, the District Co-operative Officer, Munger, passed the impugned order dated 18.08.2020 appointing the In-charge Block Co-operative Extension Officer, Bariarpur, as the Administrator of the Society.

3. It has been pleaded in the writ application that at no point of time any notice was served on the petitioner for the meeting dated 14.08.2020 and because of lack of knowledge, the members of the Managing Committee could not participate.

4. A counter affidavit has been filed by the District Co-operative Officer, Munger, stating therein that there existed grave disputes among the members of the Managing Committee because of which smooth functioning of the Managing Committee of the Society had become impossible. The petitioner himself had raised a grievance that the members of the executive committee/Managing Committee of the Society were not putting their signatures on the minutes of the meeting even after having participated in the meetings. It was petitioner No.1, who had informed that some of the members of the Society had resigned. Subsequently, an enquiry committee was constituted to enquire into the complaint against petitioner No.1 in respect of functioning of the Society. In the aforesaid circumstance, after seeking guidelines from senior officials, a decision was taken to suspend the Managing Committee of the Society for six months and appoint an officer as Special Officer of the said Society for its smooth functioning. It has been reiterated in the counter affidavit that a meeting was convened on 14.08.2020 requiring the members of the suspended Managing Committee to attend. In the said meeting, the members, who had already resigned, stated before the

Special Officer that they were not satisfied with the functioning of petitioner No.1 as the Secretary of the Society. Accordingly, on the basis of information furnished by the Special Officer, the District Co-operative Officer, Munger, passed the impugned order dated 18.08.2020 exercising power under Section 41(5) of the Act.

5. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioners, assailing the impugned action of the respondents, has submitted that the power, to suspend a Board/Managing Committee of a Society, can be exercised by the Registrar of Co-operative Societies under Section 41(2) of the Act while proceeding to take action under sub-section (1) of Section 41, if he is of the opinion that suspension of the Managing Committee is necessary in the interest of a registered society. She has placed heavy reliance upon the proviso to sub-section (2) of Section 41 to contend that it was mandatory for the District Co-operative Officer, Munger, to have reinstated the Managing Committee after completion of six months of suspension. The proviso to sub-section (2) of Section 41 reads as under :

> **"Provided that if the Board so suspended is not superseded it shall be reinstated after six months and the period during which it has remained suspended shall count towards its terms."**

6. She has contended that since till date no order of supersession of the Managing Committee has been passed, by operation of the proviso to sub-section (2) of Section 41 of the Act, the Society would be deemed to have been reinstated after completion of six months period of suspension. She has further argued that power under sub-section (5) of Section 41 of the Act can be exercised by the Registrar of Co-operative Societies, whereas, in the present case, the said power has been exercised by the District Co-operative Officer, Munger, who is not Registrar within the meaning of the said provision. She has relied on a decision of this Court in case of ***Katra Prakhand Matasyajivi Sahyog Samiti Limited and Others vs. The State of Bihar and Others***, reported in **2015 (4) PLJR 359** (paragraph 21) to contend that unless the power of Registrar is specifically conferred, the District Co-operative Officer cannot exercise the powers of Registrar under the Act. She has thirdly submitted that exercising power under sub-section (5) of Section 41 of the Act, the District Co-operative Officer, Munger, has though appointed an Administrator for purported better management of the Society by the impugned order, but has not dissolved the Managing Committee. She has urged that dissolution of Managing Committee of a Society is a condition precedent for appointment of an Administrator under sub-section (5) of Section 41 of the Act and the same having not been strictly adhered to by the District Co-operative Officer, Munger, while passing the impugned order dated 18.08.2020, the same is illegal and beyond jurisdiction. She has submitted that if legislation requires something to be done in a particular manner, the same should be done in that manner alone or not at all.

7. Mr. Mritunjany Kumar, learned A.C. to A.A.G.-6, has, in reply, submitted that the District Co-operative Officers in the State have been empowered to exercise all powers of Registrar of Co-operative Societies, except those under Sections 11, 16, 26, 44(5), 48(6) and 48(8) and 56 of the Act and Rules 37, 38 and 39 of the Bihar State Co-operative Society Rules, 1959, (hereinafter to be referred to as 'the Rules') by a notification dated 26.12.2008 published on 31.08.2008 in the official gazette. A copy of the said notification has been brought on record by way of Annexure-N to the counter affidavit. He has submitted that after noticing bundle of facts, which suggested that there was no chance of smooth functioning of the Managing Committee because of internal disputes, and, admittedly, because majority of the members had tendered resignation, a decision was taken to appoint an Administrator, exercising power under Section 41(5) of the Act, which cannot be faulted with. He has argued that the Managing Committee of the Society consists of 13 members, out of which, seven members have, admittedly, tendered their resignation. In the aforesaid background, in conformity with the provisions under Section 41(5) of the Act, decision was taken by the District Co-operative Officer, Munger, to appoint an Administrator. He has disputed the claim, raised on behalf of the petitioner, that by operation of the proviso to sub-section (2) of Section 41 of the Act, the Managing Committee revived with effect from 17.08.2020.

8. It would be beneficial to take up the first contention of Ms. Chatterjee, learned counsel appearing on behalf of the petitioners, that the District Co-operative Officer, Munger, is not a Registrar within the meaning of the Act, unless he is specifically asked to exercise such power first. In this regard, the definition of Registrar under Section 2(i) of the Act needs to be taken note of which stipulates that 'Registrar' means a person appointed to perform the duties of Registrar of Co-operative Societies under the Act. Section 6 of the Act provides for the appointment of Registrar and states that the State Government may appoint a person to be Registrar of Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar. Sub-section (2) of Section 6 of the Act empowers the State Government to confer on any person appointed under sub-section (1) of Section 6 of the Act to assist the Registrar, all or any of the powers of the Registrar under the Act except the powers under Section 26. Sub-section (3) of Section 6 of the Act enables the State Government, if it is of such opinion, that the Registrar needs assistance of Additional Registrar for speedy disposal of business, it may, by an order published in the official gazette, appoint such number of Additional Registrars as it may deem fit. Exercising power under sub-section (2) of Section 6 of the Act, the State Government has issued notification, published in official gazette on 26.12.2008, whereby the District Co-operative Officers have been authorized to exercise powers of Registrar under various provisions of the Act except those under Sections 11, 16, 26, 44, 48(6), 48(8) and 56 of the Act and further except those under Rules 37, 38 and 39 of the Rules. The said notification has statutory character and it clearly lays down that District Co-operative Officers shall exercise all powers of the Registrar of the Co-operative Societies under the Act except for the exceptions mentioned thereunder.

9. The decision of this Court, in case of ***Katra Prakhand Matasyajivi Sahyog Samiti Limited and Others*** (supra), which has been relied upon by Ms. Chatterjee, learned counsel appearing on behalf of the petitioners, has no application in the facts of the present case. This Court, in case of ***Katra Prakhand Matasyajivi Sahyog Samiti Limited and Others*** (supra), had the occasion to consider the jurisdiction of Registrar under Section 48 of the Act. The Court, in the said case, was testing the jurisdiction of Assistant Registrar in relation to exercise of power under Section 48 of the Act. The present case is entirely different, where the District Co-operative Officer has exercised his power as Registrar conferred upon him by virtue of the said notification dated 26.12.2008 published in the official gazette under Section 41(5) of the Act. Situated thus, the District Co-operative Officer cannot be said to be lacking in jurisdiction while exercising powers vested in a Registrar within the meaning of Section 2(i) and Section 6 of the Act. The said contention is accordingly rejected.

10. Coming to the next submission that the Managing Committee stood reinstated with the lapse of six months period and thereafter it has started functioning and is functioning in the absence of any order dissolving the Managing Committee as stipulated under sub-section (5) of Section 41 of the Act, in my opinion, has also no force. On close scrutiny of the scheme of Section 41 of the Act, it can be seen that provisions under sub-section (5) of Section 41 of the Act is independent of the provisions under sub-sections (1) to (4) of the said Section. Sub-section (1) of Section 41 of the Act empowers the Registrar, under the Act, to supersede the Board/Managing Committee of a Co-operative Society for a period not exceeding six months and order that all or any of the members may be disqualified for being elected to the Board of the Co-operative Society for the period specified in the order not exceeding five years. While considering the said issue, under sub-section (1) of Section 41 of the Act, exercising power under sub-section (2) of Section 41 of the Act, the Registrar may suspend the Managing Committee. Proviso to sub-section (2) of Section 41 of the Act stipulates that if there is no supersession, as contemplated under sub-section (1), and a Managing Committee has been suspended in exercise of power under sub-section (2), it shall be reinstated after six months. The circumstances, in which a power under sub-section (1) of Section 41 of the Act can be exercised, are clearly narrated therein, which are as below :

> “ **…. if the Managing Committee :**
>
> **(i) is persistently making default;**
>
> **(ii) is negligent in performance of its duties imposed on it by this Act, the Rules, the bye-laws;**
>
> **(iii) has conducted against the interest of the Co-operative Society or its members; or**
>
> **(iv) there is stalemate in the constitution or functioning of the board.**”

11. Power under sub-section (2) is apparently to be exercised in relation to exercise of power under sub-section (1) of Section 41 of the Act. Sub-section (3) is again referable to sub-section (1) of Section 41 of the Act in relation to appointment of an Administrator of the Society in case of supersession of the Managing Committee. Sub-section (4) of Section 41 of the Act deals with remuneration, which an Administrator will be entitled to get upon his appointment under sub-section (3) of Section 41 of the Act.

12. In the Court's opinion, sub-section (1) of Section 41 of the Act deals with supersession/suspension of a Managing Committee in four circumstances as mentioned under sub-section (1), which have been noted hereinabove. Sub-Sections (2) to (4) of Section 41 are provisions in relation to exercise of power under sub-section (1) of Section 41 of the Act.

13. Sub-section (5) of Section 41 of the Act, in the Court's opinion, is an independent provision: entirely different from the provisions under sub-sections 41 (1) to 41 (4). It confers upon the Registrar a power to dissolve a Managing Committee in two circumstances, apparently different from those four, which occur in sub-section (1). The two circumstances, when the Registrar may exercise the power of dissolution of Managing

Committee of a registered society under sub-section (5) of Section 41 are as under : -

> **"(a) majority of the members and elected office-bearers of the Managing Committee of a registered society resign from their respective membership or office; or**
>
> **(b) half the total number of seats of the Managing Committee of a registered society, becomes vacant for any reason whatsoever;"**

14. It is true that sub-section (5) of Section 41 of the Act contemplates for appointment of an Administrator for better management of the registered Society after dissolving its Managing Committee, if the two circumstances, as noted above, exist. One of the circumstance is when the majority of the members or elected office bearers of the Managing Committee of the registered Society resign from their respective membership or office. There is no dispute that the majority of the elected office bearers of the Managing Committee of the Society, in the present case, have resigned from their office. Admittedly, the Managing Committee consists of 13 members, out of which, seven have resigned and those seven seats of the Managing Committee have become vacant for the said reason. Both the circumstances, requisite for exercising power under sub-section (5) of Section 41 of the Act to dissolve the Managing Committee, those, admittedly, exist in present case.

15. There is a proviso to sub-section (5) of Section 41 of the Act, which authorizes the Registrar to direct that an Administrator shall take steps for constitution of new Managing Committee, if the Registrar is satisfied that the affairs of the registered society has sufficiently improved and it is desirable to restore the management to a newly elected Managing Committee.

16. It is significant to note here that sub-section (6) of Section 41 of the Act specifically prescribes remedy of appeal against an order passed under sub-section (1) and sub-section (2) of Section 41 of the Act, it does not provide such remedy against an order passed under sub-section (5) of Section 41 of the Act. The difference between an act of supersession or suspension under sub-section (1) and sub-section (2) of Section 41 of the Act, on the one hand, and dissolution of a Managing Committee under sub-section (5) of the said Section is crucial to answer the contentions raised on behalf of the petitioners. The word 'dissolved', conveys meaning of putting an end to the very existence of the Managing Committee, which cannot be revived. Circumstances, as mentioned in sub-section (5), which admittedly exist, are such pre-conditions for dissolution of a Managing Committee, which render functioning of a Managing Committee impossible, let alone smooth functioning of a Managing Committee.

17. It is to be kept in mind that Section 13(A) of the Act envisions, *inter alia*, 'democratic control' of the Co-operative Societies as one of the duties of the State Government to encourage in management of the Co-operative Societies. Management of such Co-operative Societies are vested in the Managing Committee, constituted in accordance with the provisions of the Act, and the Rules framed thereunder and the bye-laws of the Society made under the Act. Section 14A provides for constitution of Managing Committee of a Co-operative Society, registered under the Act, through election to be conducted by Bihar State Election Authority constituted under Bihar State Election Authority Act, 2008. Constitution of Managing Committee through election, to be conducted by statutory election authority, is apparently to achieve the purpose of democratic control over a Co-operative Society as contemplated under Section 13-A. It is in this background of the said scheme under the Act, this Court is required to test the correctness of the impugned action, particularly when the essential facts are not at all in dispute.

18. It is well recognized rule of statutory interpretation that when the context shows that the power is coupled with an obligation, the word ‘may’, which ordinarily devotes discretion, should be construed to mean a command. [See **(1977) 2 SCC 578**], ***Shri Rangaswami, Textile Commissioner and Ors v. Sagar Textile Mills (P) Ltd and another)***. The Supreme Court in case of ***State of Rajasthan v. Harishanker Rajendrapal*** reported in **(AIR 1996 SC 296)** also has ruled that in appropriate case the expression ‘may’ should be read as ‘shall’ if otherwise the statutory provisions are rendered redundant. The Supreme Court, in case of ***Harishanker Rajendrapal*** (supra), had the occasion to lay down the law as aforesaid while interpreting Rajasthan Minor Mineral Concession Rules, 1955, noticing the fact that if the Government had discretion to act in a particular manner (by giving literal meaning to the word ‘may’) the last portion of the provision would become redundant.

19. It is also trite that such meaning is to be placed on words of statutes as would effectuate the purpose of legislation, avoiding absurdity, unreasonableness, incongruity and conflict. In case of ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.,*** reported in **(1987) 1 SCC 424**, the Supreme Court has held that a statute should be construed after ascertaining the legislative intent and the context of the scheme of the Act. The textual interpretation should match the contextual, the Supreme Court ruled.

20. In case of ***Tinsukia Electric Supply Co. Ltd. v. State of Assam*** **(AIR 1990 SC 123),** the Supreme Court noted, with approval, following observation of King's Bench Division in case of ***Whitney v. Commissioner of Inland Revenue*** [(1926AC37)KB]:-

" A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object….",

and ruled that the Courts strongly lean against any construction, which leads to reduce a Statute to futility. The provision of statute must be so construed as to make it effective and operative.

21. In the present case, the majority of the democratically elected office bearers of the Managing Committee of the Society have resigned. Because of their resignation, the said number of seats in the Managing Committee have fallen vacant. In such circumstance, unless a Managing Committee is elected afresh in accordance with law, it would be impossible for a Managing Committee to function. In the Court's opinion, if the two circumstances, as referred to in sub-section (5) of Section 41 of the Act, exist, the Registrar, under the Act, shall have no option but to dissolve the Managing Committee. The expression 'may', occurring in sub-section (5) of Section 41 of the Act, in the Court's opinion, is coupled with an obligation, which is not merely discretionary, rather it mandates the Registrar to dissolve the Managing Committee.

22. It is true that in the impugned order dated 18.08.2020, whereby the Administrator has been appointed, noticing the circumstances, which satisfy the situation stipulated under Clause (a) and (b) of sub-section (5) of Section 41 of the Act, has not specifically ordered for dissolution of the Managing Committee. In the Court's opinion, however, dissolution of the Managing Committee is a natural consequence of existence of the two circumstances mentioned in sub-section (5) of Section 41 of the Act, which have been noticed in the impugned order appointing an Administrator. It is true that the Registrar ought to have mentioned in the impugned order dissolution of the Managing Committee while appointing an Administrator in exercise of power under sub-section (5) of Section 41 of the Act. However, since the facts are admitted, which have been noted hereinabove, presence of same in the impugned order will not require this Court to interfere with the same exercising discretionary power of judicial review under Article 226 of the Constitution of India. Further, in Court's opinion, appointment of an Administrator in exercise of power under sub-section (5) of Section 41 of the Act presupposes dissolution of the Managing Committee.

23. In any event, in the Court's opinion, if the impugned order is interfered with, on the aforesaid ground, which is too technical in character, the same shall perpetuate illegality, since a Managing Committee, with majority of the elected office bearers, having resigned, shall be permitted to have 'democratic control' over the affairs of the Society. This, in Court's opinion, will defeat the legislative intent and the ends of justice.

24. For the aforesaid reasons, this application is dismissed.

25. There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.11.2020
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