

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1206 of 2020**

Santosh Singh S/o Gulab Singh, Aged About 48 Years, Ex- Vice President, Jila Sahkari Kendriya Bank Maryadit, Ambikapur, District- Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh (Through Secretary, Department Of Co-Operative Societies) Mantralaya, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh
2. Registrar, Co-Operative Societies, Block 3, Second And Third Floor, Indrawati Bhawan, Naya Raipur, Chhattisgarh
3. Chief Executive Officer, Jila Sahkari Kendriya Bank Maryadit, Ambikapur, District- Surguja, Chhattisgarh
4. Collector District- Surguja, Chhattisgarh
5. Shri Ramdev Ram S/o Late Chamru Ram, Aged About 55 Years, R/o Village Gagoli, Tahsil Lundra, District- Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Kishore Bhaduri, Advocate
For State/ R- 1 to 4	:	Mr. Jitendra Pali, Dy. Advocate General
For Respondent no.5	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.06.2020**

1. Aggrieved of the notice of assumption of Office by respondent no.5 dated 06.03.2020 (Annexure P-1) the present writ petition has been

filed.

2. It would be relevant to narrate the brief facts of the case for better understanding of the dispute. The dispute in the present writ petition revolves around the post of Chairman in Jila Sahkari Kendriya Bank Maryadit, Ambikapur, District Surguja, Chhattisgarh, a Co-operative Society governed under the cooperative laws applicable in the State of Chhattisgarh. The respondent no.5 in the instant case was an elected Chairman of the aforementioned bank. On certain allegations, respondent no.5 was removed from the said post vide order dated 03.05.2018. The removal was subjected to challenge in WPC No. 1438 of 2018. This High Court entertaining the writ petition and admitting the same had vide order dated 18.05.2018 passed an interim order. The relevant operative part of the interim order reads as under:

“Meanwhile, (I) neither the post of Chairman of respondent No.4 Bank shall be held by respondent no.5 nor any power of said post shall be exercised by respondent no.5, (II) and the Collector, Surguja shall look into the work of Chairman of Respondent No.4 Bank till the next date of hearing but the Collector shall not take any policy decision till the next date of hearing.

Registrar, Cooperative Societies will file his own affidavit within a week clearly informing that under what authority of law, though the meeting was convened on 04.05.2018, the Joint Registrar, Cooperative Societies took up the meeting on 03.05.2018.

Similarly, Secretary, Department of Cooperative Societies will also file his own affidavit, what control the State is exercising over respondent no.4 Bank as according to the petitioner, elected President of the Bank is not being allowed by the State Authorities to run in accordance with law.”

3. Subsequently, the writ petition came up for hearing on 08.01.2019, on which date, the writ petition was disposed of on the ground of the petitioner having a statutory alternative remedy. The writ petition was disposed of permitting the petitioner to approach the Registrar, Co-Operative Society under Section 80 of the Co-operative Societies Act, 1960 (in short "the Act of 1960"). Though the writ petition was disposed of, the High Court however had held that the interim order dated 18.05.2018 would continue. The writ petition was disposed of with a specific direction to the Registrar for deciding the Revision under Section 80A of the Act of 1960 within a period of 2 months.
4. The said revision has been finalised vide order dated 11.09.2019 Annexure P-6 and the order of removal of the respondent no.5 has been held to be illegal entitling the respondent no.5 to be restored to his post of Chairman subject to the outcome of a pending contempt petition before the High Court i.e. CONT No. 118/2019.
5. Meanwhile the aforesaid contempt petition stood decided by the High Court and the two contemnors in the said case were punished with a fine of Rs.5,000/- each to be paid within a period of one month. Subsequent to the disposal of the contempt petition, the respondent no.5 has now assumed the charge of Chairman of the Bank and on assuming the charge, he has made a public notice in respect of the assumption of charge vide Annexure P-1. It is this assumption of charge which is under challenge in the present writ petition.
6. The question involved or raised by the petitioner for consideration in this writ petition is whether the respondent no.5 could have assumed the charge of Chairman voluntarily of his own without there being an

order to that effect on the part of the Bank. Secondly, whether the respondent no.5 would not stand disqualified from holding the post of Chairman in the light of the respondent no.5 being punished in the contempt proceeding and a punishment in the contempt proceeding amounting to an act of moral turpitude which otherwise is a disqualification under the provisions of Clause A of Sub Section 1 of Section 19A of the Act of 1960.

7. The respondent no.5 is already represented by Shri Manoj Paranjpe, advocate, who has filed his reply to the interim application moved by the petitioner.
8. Contention of the learned counsel for the respondent no.5 is that the notice of assumption of charge Annexure P-1 is nothing but a consequential order to the judgment passed by the Registrar, Cooperative Societies under Section 80A of the Act on a Revision preferred by the respondent no.5 dated 11.09.2019. According to Shri Paranjpe, the Revision preferred against the removal of the respondent no.5 having been allowed, the natural consequences would be that of the respondent no.5 being restored back to the position as it stood prior to the illegal removal dated 03.05.2018. In the course, if respondent no.5 has assumed the charge, the same cannot be said to be in any manner, illegal or contrary to the Act of 1960. The further contention of the counsel for respondent no.5 is that the allegation of the respondent no.5 not qualified for the post of Chairman is one which needs consideration and is again a fresh cause of action which would require separate adjudication for which there is a specific provision of law in the Cooperative Societies Act itself and the petitioner should avail the

said recourse. Counsel for the respondent no.5 further submits that even otherwise the petitioner does not have any locus for filing the writ petition for the reason that the petitioner stands removed from the post of Vice Chairman way back on 22.02.2019 and he has also been removed from the primary membership of the Society and as such he cannot have any grievance.

9. Mr. Jitendra Pali, Dy. Advocate General, appearing for the State also opposed the petition on the ground of there being an alternative statutory remedy under Section 64 for the petitioner to raise the issue whether the respondent no.5 stands disqualified to hold the post or not.

10. Having heard the contentions put forth on behalf of the advocates what is relevant at this juncture to consider is the fact that admittedly the respondent no.5 was an elected Chairman of the Bank. He was removed from the post on 03.05.2018. Initially the removal was challenged in WPC No. 1438/2018. The writ petition ultimately got disposed of on the ground of alternative remedy, permitting the respondent no.5 to prefer a Revision under Section 80A of the Act of 1960. The said Revision finally stood allowed on 11.09.2019. True it is that in between there was a contempt proceeding drawn against the Registrar and the respondent no.5 and both of whom were found guilty of committing contempt of Court and vide order dated 27.02.2020, both were sentenced to pay fine of Rs.5000/- each to be paid within a period of one month.

11. It would be relevant at this juncture to consider the provisions of Section 19A of the Cooperative Societies Act, 1960. The relevant portion of which is being reproduced hereinunder:

“[19-A. Disqualifications of member- (1) ²[No person shall be eligible for admission as member and any member shall cease to be a member of a society, if]-

- (a) he is an applicant to be adjudicated or is an undischarged insolvent;
- (b) he has been sentenced for an offence involving moral turpitude and a period of five years has not elapsed from the date of expiry of sentence;”

12. Section 19A spells out the grounds on which a person would stand disqualified. Section 19AA prescribes the procedure for disqualification of a member. For ready reference the procedure so prescribed is reproduced hereinunder:

“⁷19 [19-AA. Disqualification for membership of committee and for representation. - No person shall be eligible for election as a member of the committee of a society and shall cease to hold his office as such if he suffers from such disqualification as may be prescribed. No society shall elect any member as its representative to the committee of any other society or to represent the society in other society, if he suffers from such disqualification, as may be prescribed:

Provided that, if a member suffers from any of the disqualifications prescribed under this section-

- (i) it shall be lawful for the committee of the society to disqualify such member where he is elected as a Director being a member of that society, after giving him a reasonable opportunity of being heard, within two months from the date of coming to the notice of the society form holding the post,

² Subs. by M.P. Act No. 25 of 1988 [w.e.f. 28-6-1988].

⁷ Ins. by M.P. Act No. 25 of 1988 [w.e.f. 28-6-1988].

(ii) if, the member incurs a disqualification, in the higher level society, for his actions as a representative, such higher level society shall take action to disqualify him for holding the post in the higher level society.

If the society fails to take action, the Registrar shall disqualify such member from holding such post by an order in writing after giving him reasonable opportunity of being heard.]”

13. A plain reading of the aforesaid provisions of law clearly reflects that the question or the aspect of a person being disqualified or not is a matter to be decided by the Registrar in a proceeding exclusively drawn in this regard. Unless there is a proceeding drawn, there cannot be an inference drawn, that a person stands disqualified automatically.

14. So far as the assumption of charge is concerned, this Court is of the opinion that since there was an action of removal of the respondent no.5 from the post of Chairman and the same being questioned before the Registrar under Section 80A of the Act of 1960, the respondent no.5 has all the right for being restored back to the position as it stood prior to the illegal order was passed. The position being restored, the question of disqualification comes only thereafter which in the opinion of this Court is an entirely different cause of action which needs to be considered separately on an application moved by the aggrieved person in this regard to the Registrar.

15. As of now, so far as the assumption of charge by the respondent no.5 pursuant to the order of the Registrar dated 11.09.2019 is concerned, that same cannot be said to be in any manner bad in law, illegal or contrary to the Act of 1960.

- 16.** Another question which was raised by the counsel for the petitioner as to whether the act on the part of the respondent no.5 amounting to an act of moral turpitude or not, again is an issue or question which would be considered and decided by the authority dealing on the issue of disqualification of the respondent no.5 in the event an application in this regard being moved by the petitioner.
- 17.** The question of the petitioner's locus also would be looked into by the Registrar if an objection is raised in this regard.
- 18.** Accordingly, the writ petition stands dismissed.

**Sd/-
P. Sam Koshy
Judge**