

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1419 of 2023

-
1. Korbaddha Primary Agriculture Cooperative Society Limited P.O.- Laguniya Suryakanth, P.S.- Town, District- Samastipur through its Chairman, Ravindra Kumar, male, aged about 45 years, S/o Ram Chandra Singh, R/o Village P.O.- Laguniya Suryakanth, P.S.- Town, District- Samastipur.
 2. Ravindra Kumar, S/o Ram Chandra Singh, R/o Village P.O.- Laguniya Suryakanth, P.S.- Town, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Cooperative Department, Govt. of Bihar, Patna.
2. The Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Registrar, Cooperative Societies, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar, Advocate
For the Respondent/s	:	Mr. Uday Bhan Singh, AC to GP-19
		Mr. Mukesh Kumar Thakur, Advocate
		Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 29-03-2023 Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the State Election Authority and the learned counsel for the Co-operative Bank.

The writ application has been filed seeking quashing of Clause (1) of the letter dated 28.05.2019 issued by the Registrar, Co-operative Societies, Bihar, Patna wherein it is provided that in case a member of a Primary Agricultural Credit Cooperative Society limited becomes a defaulter in repayment of short-term agricultural loan to the Co-operative Bank then in that event the society also becomes a defaulter.

Learned counsel for the petitioner submits that



petitioner is Chairman of Korbaddha PACCS and thus is aggrieved by the letter dated 28.05.2019 issued by the respondent no.3. It is next submitted that even the impugned Clause (1) of the letter dated 28.05.2019 itself envisages that short-term agricultural loan to the members of a society is his personal loan, it is thus submitted that since the short-term loan is personal loan of the member of the society, then how the PACCS collectively becomes a defaulter, in case its member is declared a defaulter, when neither the Banking Regulation Act, 1949 nor the Bihar Co-operative Societies Act, 1935 (*hereinafter referred to as the The Act*) or the bye-laws of the Society or any law, occupying the field, makes the society collectively a defaulter in case its member is declared a defaulter of a short-term agricultural loan.

Learned counsel further submits that the impugned letter dated 28.05.2019 was issued in light of the order dated 25.09.2014 in CWJC No. 16517 of 2014, it is next submitted that one Abha Devi had filed CWJC No. 16142 of 2014 challenging the Letter No. 2269 dated 29.05.2013, issued by the respondent no.3 whereby it was communicated that such member of the Managing Committee of the Co-operative Society who are facing proceedings under Section 41 of the Act would be debarred from contesting elections.

Learned counsel for the petitioner submits that this



Court after hearing the parties passed order dated 23.09.2014 in CWJC No. 16142 of 2014 holding that until such time that any final order is passed by the statutory authority under Section 41 of the Act or an order of disqualification is passed against any Chairman/Member of the Managing Committee holding them as a 'defaulters', the Returning Officer-cum-Block Development Officer concerned cannot reject any nomination on a mere request of bank or in absence of production of a 'no dues certificate' by the intending candidate in view of the law laid down by this court in case of **Md. Faizan and Anr. vs. The State of Bihar and Ors.** reported in **1997 (1) PLJR 1028** (Annexure-3), it is next submitted that the respondent thereafter was directed to file counter affidavit in the said case and the case was pending adjudication when in the meantime, the State Election Authority *vide* Memo dated 25.09.2014 circulated the order dated 23.09.2014 in CWJC No. 16142 of 2014, in pursuance whereof, the nomination of Abha Devi was accepted and CWJC No. 16142 of 2014 thus was disposed of as no grievance remained to be redressed by order dated 16.10.2014 (annexure-4). It is next submitted that even the respondent no.3 also informed the Managing Director of Central State Cooperative Bank Limited that Returning Officer cannot reject nomination papers of the office bearers of Managing Committee



of Co-operative Society until they are declared defaulter in matter of cash credit loan under Section 41 of the Act by letter dated 27.10.2016 (Annexure-6 to the writ application).

Learned counsel for the petitioner thus submits that it becomes clear that until and unless either the Co-operative Society or any of its member or office bearers are declared defaulter in terms of Section 41 of Act, 1935 then only they become ineligible from contesting election i.e., in absence of any order under Section 41 of the Act, no society or its member or office bearer can be debarred from contesting any election of the Society, it is next submitted that Korbaddha PACCS has 1124 members, out of whom 112 members have taken agricultural loan, known as Kisan Credit Card, and out of 112 members, 30 members have defaulted out of whom 15 have died. Learned counsel next submits that when this writ application was filed, at that time the election process for holding election of Samastipur Central Co-operative Bank Limited, Samastipur (*hereinafter referred to as the Bank*) had not commenced.

Learned counsel submits that this matter was taken up on 27.03.2023 when an objection was made by the learned counsel appearing for the State Election Authority that the writ application does not disclose whether any of the member of the petitioner/society have been held to be a defaulter under Section



41 of the Act or not on which a categorical submission was made on behalf of the petitioner that none of the members of the society, who have taken loan, have been declared a defaulter in terms of Section 41 of the Act. Learned counsel further submits that the said pleading though was missing in the writ application for which an I.A. has been filed being I.A. No. 1 of 2023 wherein at paragraph '2' a prayer has been made to implead Bihar State Election Authority, Patna through its Chief Election Officer; the Chief Election Officer, Bihar State Election Authority, Patna; the Secretary, Bihar State Election Authority, Patna; the District Magistrate, Samastipur; the Sub-Divisional Officer-cum-Election Officer, Samastipur; the District Co-operative Officer, Samastipur; the Samastipur District Central Co-operative Bank Limited, Samastipur through its Managing Director and the Managing Director, Samastipur Central Co-operative Bank, Samastipur. It is next submitted that at paragraph '5' of the I.A. it has been specifically pleaded that none of the members of the petitioner/Korbaddha PACCS Limited have been declared a defaulter under Section 41 of the Act.

The I.A No. 1 of 2023 is allowed.

Learned counsel further submits that it may be a possibility that the nomination of the petitioner may be rejected based on the letter dated 28.05.2019.



Learned counsel for the State Election Authority submits that the writ application appears to be misconceived, it is next submitted that it absolutely does not stand to reason that when petitioner was elected Chairman of the PACCS in the year December 2019 and the letter impugned in the present writ application is of May, 2019 then why the said letter was not challenged by the petitioner in time if he was aggrieved by what was recorded in the said letter. It is next submitted that the petitioner waited for four years which definitely points towards his lackadaisical approach and the fact that he was sleeping over his right and now he has come to the Court based on an apprehension that his nomination may be rejected by misinterpreting the letter dated 28.05.2019 when the petitioner on affidavit has stated that none of the members of the petitioner/society have been declared defaulter in terms of section 41 of the Act as such it is submitted that his apprehension, that his nomination would be rejected, is misconceived.

After hearing the learned counsel for the parties, the Court concurs with the submissions of the learned counsel appearing for the State Election Authority, further the Court is not inclined to entertain the writ application at this stage for the reason that the election process has commenced and the



petitioner was sleeping over his right for four years and suddenly in the year 2023 he wakes up challenging the letter dated 28.05.2019 when in the nature of submissions made by the learned counsel for the petitioner, it manifests that the petitioner only has an apprehension of rejection of his nomination in view of the letter dated 28.05.2019 as such no writ can be issued.

Since the petitioner has approached this Court at a belated stage, as such the Court is not inclined to entertain the writ application.

However, the petitioner would be at liberty to challenge the order dated 28.05.2019 as and when the occasion arises.

Accordingly, the writ application is dismissed.

(Satyavrat Verma, J)

Rishi-II/-

U			
---	--	--	--

