

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4569 of 2023

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1. The Bihar Cooperative Credit Society Ltd. Bhagalpur Head Office-Ashirbad Bhawan, G.C. Banarjee Road, Bhikhanpur, Bhagalpur-PIN-812001 through its Chief Executive Officer Namely Jitendra Mishra, Male, aged about 57 Years, Son of Shsahibhushan Mishra, Residen tof N.H.28, South of Shiv Mandir, Village and P.O.-Khabra, P.S. Sadar, Kiratpur Gurdas, Muzaffarpur.
 2. Nitesh Kumar Son of Upendra Singh Resident of Pratap Nagar Kahalgaon, near the Anchal Office, P.S. Kahalgaon, Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Joint Registrar, Cooperative Societies, Bhagalpur Division, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Advocate Mr. Rakesh Kumar Jha, Advocate Mr. Girish Pandey, Advocate
For the Respondent/s	:	Mr. Sushil Kumar, GP-22 Mr. Uday Prasad, AC to GP-22

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-09-2023

Heard Mr. Amit Srivastava, learned senior counsel
duly assisted by Mr. Rakesh Kumar Jha, learned counsel
appearing on behalf of the petitioners. The state is represented
by Mr. Sushil Kumar, learned GP-22.

2. The petitioner no. 1 is a Co-operative Society
registered in accordance with the provisions of the Bihar Self
Supporting Co-operatives Societies Act, 1996 (hereinafter
referred to as the 'Act'), whereas the petitioner no. 2 is the
elected Chairman of the society, have invoked the prerogative
writ jurisdiction of this Court under Article 226 of the
Constitution seeking quashing of the order dated 13.01.2023 as



contained in Memo No. 37 dated 10.03.2023 (Annexure - 10) passed by the Bihar Self Supporting Co-operative Society Tribunal, Patna whereby the Bihar Co-operative Credit Society Limited, Bhagalpur has been ordered to be liquidated and dissolved under the supervision of the Registrar, Co-operative Societies, Bhagalpur Division.

3. The short facts which led to the filing of the present writ petition is that the Bihar Co-operative Credit Society Limited, Bhagalpur was incorporated on 30.05.2011 by the Joint Registrar, Co-operative Societies, Bhagalpur Division in terms of Section 8 of the Act. The Society has been engaged in the business of credit and thrift as per its objectives and bye-laws. The authorized share capital of the Society is one hundred crores. The Society has no financial assistance of the Government nor the Government and its authorities have any control over the functioning of the Society, except supervision. Presently, the Society has 27098 members as on 31.03.2022 and have created funds by their own contribution, all members are shareholders of the Society.

4. It is the case of the petitioners that the Society while it was functioning in accordance with law, it received a statutory notice contained in Letter No. 558 dated 02.07.2018 issued under the signature of respondent no. 3 in terms of



Section 44(1) of the Act, directing the Society to submit its explanation within 90 days with regard to the charges enumerated, therein.

5. In response to the aforesaid notice, the Society submitted its explanation to the respondent no. 3 vide its Letter dated 29.09.2018 (Annexure – 4) controverting all the charges with its explanation. Thereafter, the Society did not receive any communication from the respondent no. 3, however, all on a sudden, the respondent no. 3 filed a petition dated 19.12.2019 before the Co-operative Tribunal seeking an order of liquidation of the Society under Section 44 of the Act. The aforementioned petition dated 19.12.2019 was assigned to the member of the Co-operative Tribunal by the Chairman of the Tribunal on the issue of admission fixing 10.05.2021 as the date of hearing. Accordingly, notices were issued fixing the next date of hearing on 04.10.2021. The Society filed its detailed reply to the petition dated 19.12.2019, filed by the respondent no. 3 as noted hereinabove, controverting all the charges, grounds mentioned in the application dated 19.12.2019. A rejoinder was also filed by the respondent no. 3 to the reply of the petitioners Society, however, it is the case of the petitioners that the facts pleaded in the reply was not rebutted by the respondent no. 3. The Society further filed reply to the rejoinder of the respondent no. 3 and,



thereafter, again filed a supplementary reply with additional argument, the copies of which have been brought on record by way of Annexures 8 and 9.

6. The matter was finally heard on 06.01.2023 and the case was fixed for 13.01.2023 (Annexure – 10) for passing final order and accordingly, the order was passed on 13.01.2023 (Annexure - 10). However, the same was issued on 10.03.2023.

7. Learned senior counsel while assailing the impugned order as contained in Annexure – 10, first of all submits that from the records it would be evident that the case was admitted by a single member of the Bench of the Co-operative Tribunal but later on the matter was being heard by two members Bench of the Tribunal headed by its Chairman but the order has been passed only under the signature of the Chairman of the Co-operative Tribunal, thus, it creates doubt that the Chairman of the Tribunal on his own passed the order to which the other member did not agree with his findings and thus, did not sign the order. It is next submitted that from perusal of the order dated 10.03.2023, it would manifest that the Tribunal was swayed by the fact that the Society had not filed annual statement of account for the financial year 2017-2018 and 2018-2019 in terms of Section 35 of the Act, as such, the Society has failed to discharge its duty. The impugned order



records that the Chief Executive Officer of the Society could have submitted the annual statement on his own or by convening a General Body meeting or by constituting an adhoc, as such, the inaction raises ulterior motive towards swindling of hard earned money of members of the Society and the people at large.

8. Learned senior counsel submits that the Society had never breached the mandate of Section 35 of the Act, till the financial year 2016-2017, thereafter, annual statement of record for the financial year 2020-2021 was submitted on 29.09.2021. For financial year 2021-2022, the annual statement was submitted on 25.07.2022. It is an admitted fact that the Society has also submitted audit report for the year 2017-2018 on 26.09.2018, for the financial year 2018-2019 on 02.01.2020 and for 2019-2020 on 13.11.2020. It is, thus, submitted that the annual returns were filed belatedly, but admittedly prior to the passing of the impugned order.

9. Learned senior counsel also clarified the legal position that for filing annual statement, it was necessary to have a general body meeting and from perusal of Section 25(1) of the Act, it is clear that only board is authorized to convene the meeting of general body. The terms of the board of the Society was upto 23.06.2017, thus, the election of the new board was to



be conducted by the Bihar State Election Authority in terms of Section 29(1) and (2) of the Act. Though, the Society submitted all the documents required for conducting the elections before the authority concern, but the same was not forwarded to the State Election Authority and, thus, the election could not be conducted, necessitating the petitioner to file CWJC No. 13248 of 2017 for a direction upon the authorities for conducting the elections.

10. It is thus submitted that since the term of the Board of the Society had expired, as such, it was not possible for the petitioner to call a General Body Meeting submitting the statement of annual return. It has also been pointed out that vide Letter No. 423 dated 06.12.2018 issued by the Joint Registrar, Co-operative Society (Respondent No. 3), the functioning of the Society was stayed on the ground that there was no Board. It is further submitted that the respondent no. 3 vide his letters allowed the Society to function only for the purposes of making payment to depositors and recovery of loans and also warned for their decision to convene the General Body Meeting and finally the election took place and a new elected Board only came into existence on 12.04.2022. It is the case of the petitioners that the aforementioned facts was brought to the notice of the Tribunal, but despite specific request made by the petitioner no. 2, the



Tribunal did not accede to the request and passed orders without hearing the petitioner no. 2.

11. It is further submitted that based on orders of the Departmental Authority, an inquiry was conducted by the Sub-Divisional Audit Officer, Sheikhpura who submitted his report dated 25.03.2022 (Annexure – 15) wherein, no infirmities against the Society was found. The aforesaid report was also brought to the notice of the Tribunal, but the same was not considered while passing the impugned order. The petitioners further submitted that the impugned order is bad for the reason that it bases its conclusion on surmises and conjectures and, moreover, not a single member of the Society ever made any complaint against the Society or its functioning or with regard to swindling of money by the officials of the Society. It is further submitted that when the term of elected Board of the Society was coming to an end and all the requisite formalities were completed and forwarded for conducting elections to the respondent no. 3, while the same was not forwarded to the State Election Authority in time, this also demonstrates that respondent no. 3 was aware that the term of the elected members of the Board is coming to an end and the Society would not be in a position to file its annual statement giving him an opportunity to seek liquidation of the Society in terms of



Section 44 of the Act.

12. While drawing the attention of this Court to the impugned order, learned senior counsel vehemently submitted that there is not even remote consideration of the any submissions made on behalf of the petitioners and the impugned order is based upon the grounds which were not even the part of the charges alleged by the respondent no. 3 in his Letter No. 558 dated 02.07.2018, enumerated as Points No. A to E. He lastly submits that the impugned order suggests that the provisions of the Bihar Self Supporting Co-operative Societies Act has been violated but it has not been disclosed as to the action of the petitioners transgresses which of the provisions of the Act.

13. Heavy reliance has been made on a Constitution Bench judgment of the Apex Court rendered in the case of ***Mohinder Singh Gill and Another Vs. Chief Election Commissioner, New Delhi and Others*** reported in ***AIR 1978 SC 851*** and submits that after passing the impugned order, the respondents by filing the counter affidavit trying to develop and enlarge the scope of the impugned order by supplementing fresh reasons than that of the ground considered for passing the impugned order. The order of dissolution is based on the sole ground on non compliance of Section 35 of the Act and not for the grounds stated in paragraph 5(i), (ii), (iii), (iv), (v), (vi),



(vii), (viii), 6(c)-(e) part of (f) and para 7 of the counter affidavit. Thus, it is hit by the well settled law enunciated by the Apex Court in the case of *Mohinder Singh Gill (supra)*.

14. While summing up his submissions, learned senior counsel once again submitted that the right of the Society guaranteed under Article 19 (1)(c) of the Constitution of India cannot be allowed to be violated on the basis of presumptive ground, vague findings and for the fault of the authorities themselves, who are bound to follow the mandate of Article 43 (b) of the Constitution. Reliance has also been made on a recent judgment of Hon'ble Apex Court in Civil Appeal No. 7261 of 2022.

15. Per contra, Mr. Sushil Kumar, learned GP 22 while refuting the contention of the petitioners submitted that the paid up share capital of the petitioner is more than rupees one lakh, which is contrary to the Section 56 of the Banking Regulation Act, 1949 and so, in view of the provisions of Banking Regulation Act, it was mandatory for the Society to obtain license from Reserve Bank of India. Thus, the Society has violated the mandatory provisions of Banking Regulation Act, 1949.

16. Section 56(O)(i)(1) specifically speaks that for any credit societies which involves itself in banking business, it



is mandatory for it to apply in writing for license to the Reserve Bank of India, but the same has not been obtained and in this way, the petitioners Society did not comply with the order of Registrar, Co-operative Society. Thus, it was sufficient ground for passing order for the liquidation of the Society.

17. It is also submitted that during the period in which the annual report has not been submitted, the Society was accepting deposits and provided loans without any Managing Committee. This is also the gross violation of the Act, Rules and the bye-laws of the Society. There are materials suggesting that the petitioners Society was deliberately committing misdeeds which should be necessarily avoided by the financial institution. Hence, necessitated the impugned order.

18. It is well settled that in judicial review the Court has no power to trench on the jurisdiction to appreciate the evidence and to arrive to its own conclusion. Judicial review is not an appeal from a decision but a review in the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion, which the authority reaches, is necessarily correct in the view of the Court or the Tribunal. When the conclusion reached by the authority is based on evidence, the Court or the Tribunal is devoid of the power to reappreciate the evidence, the



only consideration the Court/Tribunal has, in its judicial review, is to consider whether the conclusion is based on the evidence on record that support the finding, or whether the conclusion is based on no evidence (*State of Tamil Nadu and Another Vs. S Subramaniam* reported in *AIR 1996 SC 1232*), “emphasis supplied”.

19. This Court has given anxious consideration to the submissions of the parties and perused the materials available on record. Having careful consideration of the impugned order, it appears that there is no discussion with regard to the charges which was levelled against the petitioners Society, as enumerated in Points No. A to E contained in Letter No. 558 dated 02.07.2018 issued by the respondent no. 3. This Court also finds that a detailed reply/explanation and reply to the counter filed on behalf of the respondent no. 3, but there is no consideration of such explanation/points and additional affidavit filed by the petitioners, in the impugned order. This Court also finds substance in the submission of the petitioners that there was sufficient reason of non submission of annual statement of record for the financial year 2017-2018 and 2018-2019 on account of the expiry of the term of the Board and the functioning of the Society was stayed on the ground that there was no Board.



20. Irrespective of the aforesaid fact, it is admitted that the audit reports for the aforesaid period have been filed prior to the passing of the impugned order. It would be also worth consideration that the election of the new Board was finally conducted and the elected Board came into existence on 12.04.2022 and this fact was brought to the notice of Tribunal, but despite specific request made by the petitioner no. 2 seeking query, the Tribunal did not accede to the request and passed order without hearing the petitioner no. 2.

21. The impugned order further did not discuss the inquiry report submitted by the Sub-Divisional Audit Officer, Sheikhpura wherein no infirmities was found. The conclusion of the Tribunal with regard to the swindling of money by the officials of the Society is also not based upon any materials and, *prima facie*, it appears to be based upon presumption which also makes the impugned order bad and illegal.

22. This Court cannot lose sight of the fact that the matter was heard by two of the members, including the Chairman but it bears only the signature of Chairman and, as such, the submission of the petitioner that it casts an aspersion on the legitimacy of the order and the same being sole of the Principles of coram non-judice cannot be brushed aside.

23. Further, the submissions made on behalf of the



respondents in support of the impugned order are in supplementing the grounds, which was not even matter in issue before the Tribunal and, as such, the same cannot be accepted and hit by the well settled law as held in the case of **Mohinder Singh Gill (supra)**. It would be apt and proper to quote para 8 of the judgment, noted hereinabove:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088: AIR 1952 SC 16]:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older.

24. In view of the aforesaid facts and circumstances



and the position obtaining a law, the impugned order passed by the Bihar Self Supporting Co-operative Society Tribunal, Patna as contained in Memo No. 37 dated 10.03.2023 (Annexure – 10) is hereby quashed and cancelled.

25. The present writ petition stands allowed.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2023.
Transmission Date	NA

