

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15746 of 2022

Narendra Singh @ Narendra Prasad Singh, aged about 51 Years, Male, son of Late Ram Vilash Singh, Resident of Village-Mohanpur, Police Station-Muffasil, District- Begusarai at present elected Chairman of the Begusarai Central Co-Operative Bank Ltd. Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-Operative, Government of Bihar, Patna.
2. The Registrar, Co-Operative Societies, Department of Co-Operative, Government of Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The Managing Director, the Begusarai Central Co-Operative Bank Ltd. Begusarai.
5. Kaushal Kishore, father's name not known, the Begusarai Central Co-Operative Bank Ltd. Begusarai.
6. Madhu Kant Mahto, father's name not known, the Begusarai Central Co-Operative Bank Ltd. Begusarai.
7. Sanjay Kumar, father's name not known, the Begusarai Central Co-Operative Bank Ltd. Begusarai.
8. Smt. Babita Devi, Wife of not known, the Begusarai Central Co-Operative Bank Ltd. Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	: Mr. Aditya Narain Singh with Mr. Kundan Kumar Sinha, Advocates
For the State	: Mr. Mahtab Alam, SC 20
For the Respondents No. 4	: Mr. Patanjali Rishi, Advocate
For the Respondents No. 5 to 8	: Mr. Yogendra Mishra, Sr. Advocate along with Ms. Swati Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 10-01-2023



Heard Mr. Aditya Narain Singh, learned counsel along with Mr. Kundan Kumar Sinha, learned counsel for the petitioner; Mr. Mahtab Alam, learned AC to SC 20 for the State; Mr. Yogendra Mishra, learned senior counsel along with Ms. Swati Mishra, learned counsel for the respondents no. 5 to 8 and Mr. Patanjali Rishi, learned counsel for the respondent no. 4. The private respondents have already entered appearance in the present proceeding through their counsel as mentioned above.

2. The petitioner has moved the Court for the following reliefs:-

“1. That this is an application for issuance of a writ in the nature of certiorari for quashing of order dated 14.10.2022 bearing Memo No. 8249, issued under the signature of Registrar Co-operative Societies, Bihar, Patna by which the Managing Committee of the Central Co-operative Bank Ltd. Begusarai has been dissolved and by the same order the District Magistrate, Begusarai has been appointed as Administrator of the Central Co-operative Bank Ltd. Begusarai.

The reason for dissolution of Managing Committee as indicated in that out of 9 members/Directors, four members have resigned from their post. The resignation of said members have been accepted by the Respondent Registrar, that too on the oral statement of Managing Director of the Central Co-operative Bank Ltd. Begusarai.

It is indicated in the impugned order that resignation process of the said members was initiated in the official chamber of respondent Registrar Co-operative Societies on 14.10.2022 and on the same date the Board of



Director was dissolved. The Registrar himself admits that as per the Bank Byelaws issue of resignation of the Board's member can only be discussed by the Managing Committee/Board of Directors of the said Bank, but the respondent Registrar acting upon the statement of the Managing Director, accepted the resignation of those members on the ground that out of nine members four members have resigned, therefore there will be insufficient number for meeting the requirement of corum."

3. The issue before the Court is as to whether the order passed by the Registrar, Co-operative Societies (hereinafter referred to as the 'Registrar') dated 14.10.2022 which is impugned in the present writ application is both factually and legally sustainable. The same relates to the issue of dissolution of the Board of Directors (hereinafter referred to as the 'Board') of Begusarai Central Co-operative Bank Limited (hereinafter referred to as the 'Bank').

4. Learned counsel for the petitioner submitted that the order suffers from grave illegality and also *mala fide*. It was contended that the order has been passed by the Registrar on the resignation submitted by four elected members of the Board of the Bank (respondents no. 5 to 8) before the Chairman of the Board (petitioner) tendering their resignation with a request to accept the same which has been forwarded by the Managing Director of the Bank to the Registrar. Learned counsel submitted that the illegality



started right from the very inception inasmuch as the affidavit was affirmed by the respondents no. 5 to 8 on 10.10.2022 and thereafter on the next day i.e., 11.10.2022, the actual resignation was addressed to the Chairman of the Bank, which the Managing Director of the Bank personally took before the Registrar and he called the respondents no. 5 to 8 before him and taking their statement has passed the impugned order. It was submitted that such order has been done at the behest of the Managing Director and in contravention of the statutory provisions as also the bye-laws of the Bank. In support of his contention, learned counsel submitted that the total number of members in the Board is 15 but when the present Board was constituted on 18.01.2018, there were only 9 elected members and the Managing Director, who was in office automatically become an *ex officio* member and Secretary of the Board. Thus, the total number in the Board of Directors according to learned counsel was 11 with one nominated member i.e., the Joint Registrar, Co-operative Society, Bhagalpur, which was made in terms of Section 44 AX of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'). Thus, it was contended that the total number of members in the Board is 11 for this Bank. Learned counsel submitted that first of all the resignation has to be accepted by the Board and the same was not



even allowed to be placed before the Board and straightaway the Managing Director of the Bank, who had no jurisdiction in the matter, with *mala fide* intention has forwarded it to the Registrar.

5. Moreover, it was submitted that even for the sake of argument, if it is taken that 4 persons had resigned, the same would have resulted in the Board of Directors being reduced from 11 to 7 and the quorum is 50% as per the Act and 6 as per the bye-laws. It was submitted that even for the sake of testing it in terms of the provision of Section 41 (5) of the Act, which talks about there being vacancy of more than 50% in the Board, the 50% minimum requirement would be of only 6 members and, thus, on both the counts of conformity with the Act and bye-laws, 6 is the minimum number required for the Board of Directors to be in existence. In the present case, it was contended that the said 50% being counted on the basis of the total strength of the Board of Directors on paper i.e., 15 is erroneous and it is only the maximum number indicated and it is not the requirement of law that at every point of time there should be full 15 members. Further, learned counsel submitted that even with regard to filling up of the remaining 4 vacancies, it was the duty of the State authorities to do the same and for which neither the elected members nor the Board in existence can be held responsible and thus no adverse order can



be passed based on something which was beyond the control of the Board or the elected members.

6. Learned counsel submitted that the illegality is also writ large by the act of the Registrar where the application tendering resignation addressed to the Chairman with a prayer only to accept the resignation has been made a ground to hold that there was deemed resignation and deemed acceptance and further that in the same stroke, the Board also was dissolved under Section 41 (5) of the Act. At this juncture, learned counsel submitted that as per Section 41 (1) of the Act, wherever there is a situation where the Board has to be either superseded or dissolved, in financial institutions like the Bank in the present case, the concurrence of the Reserve Bank of India is required, which admittedly has not been done in the present case. Learned counsel submitted that even the Rule of *audi alteram partem* of giving notice to the remaining elected members before such a drastic action is taken has not been adhered to. Learned counsel submitted that the role of the Managing Director of the Bank is clearly not above board for the reason that he has no jurisdiction to take the so called resignation letters submitted by the respondents no. 5 to 8 to the Registrar, which has been done. In support of such contention, learned counsel relied upon the decision in **Rabindra Nath**



Mishra vs. State of Bihar, 2020 (2) PLJR 644, the relevant being at paragraph no. 39. Further, it was contended that since the Board has been dissolved prior to the term of five years as per the Act, the Court may direct for continuation of the Board for the remaining period of its original term. In this context, reliance was placed on the decision in **State of M.P. vs. Sanjay Nagayach, (2013)7 SCC 25**, the relevant being at paragraphs no. 30, 31, 32 and 33.

7. Learned counsel for the State opposing the writ petition submitted that the Registrar was within his power to take an independent decision under Section 41(5) of the Act for the reason that before him was a situation where apparently the strength of the Board was below 50%; thus, satisfying the requirement for dissolution of the Board, which has been done. It was submitted that the reasoning that out of 15 members, the minimum required was 8 and upon resignation, only 6 members being available, the Board of Directors could not have functioned, the Registrar has shut his eyes to the factual and legal aspects resulting in grave injustice.

8. At this juncture, when the Court made a direct query to learned counsel for the State with regard to the total number of members in the constituted Board of the Bank, learned counsel for



the State submitted that it was 10 and the Joint Registrar, Co-operative Societies, Bhagalpur was never nominated to the Board after election when the present Board was constituted on 18.01.2018.

9. Mr. Yogendra Mishra, learned senior counsel appearing for respondents no. 5 to 8 submitted that the entire case of the petitioner is misconceived. He submitted that as per law, especially Section 14(1) of the Act, the total number of members of the Board in the Bank is 15 and that is the number which has to be taken into account for determining whether the situation had arisen for taking action by the Registrar under Section 41(5) of the Act. Further, it was submitted that Section 41(5) can be independently invoked irrespective of Section 41(1) and, thus, there was no requirement for obtaining prior concurrence of the Reserve Bank of India. Moreover, it was submitted that once the respondents no. 5 to 8 have themselves appeared before the Registrar, no further proof was required with regard to them having tendered their resignation voluntarily and the same was also required to be acted upon, but because, in the eyes of law, the Board did not exist, the Registrar was forced to take such decision and pass the order impugned, which cannot be faulted. In this context, learned counsel relied upon the decision in **Vinay Kumra**



vs. State of Bihar, 2016(3) PLJR 160, for the proposition that the moment the vacancy in the Board is more than 50%, dissolution is automatic and there is no legal or formal requirement of dissolving the same. It was submitted that the aforesaid decision of the learned Single Judge has also been affirmed by the Division Bench in **Indradeo Prasad vs. State of Bihar, 2016(4) PLJR 903**. Learned counsel submitted that similar view was taken by another Division Bench in **Ashok Kumar Singh vs. State of Bihar, 2017(1) PLJR 919**.

10. Further submitting, learned counsel contended that the bye-laws of the Bank have been framed under Rule 15 of the Bihar Co-operative Societies Rules, 1959 which does not have the same force as that of the statute, especially Section 41(5) of the Act thereof which has been held by the Hon'ble Supreme Court in **Co-op. Cr. Bank v. Ind. Tri., Hyderabad, AIR 1970 SC 245**, the relevant being at paragraph no. 10 and also in **Zoroastrian Co-op. Hsg. Socy. Ltd. v. Dist. Registrar, Co-op. Societies (Urban), AIR 2005 SC 2306**. Summing up his arguments, learned counsel submitted that in the aforesaid view of the matter, especially, the decisions of the Courts, the bye-laws of the Bank were not to be looked into by the Registrar while considering the issue purely from the point of view of the statutory requirement. Learned



counsel submitted that even from the factual aspect, the total strength of the Board was 15, out of which 9 were elected and one was the Managing Director who was *ex-officio* and one was supposed to be nominated by the State Government but never nominated and 4 were either to be co-opted by the Board or elected, which was never done. Thus, it was submitted that in view of the Managing Director having been removed by the Board the vacancy further shrunk from 10 to 5 and in no view of the matter, 5 could be the minimum quorum out of 15. Thus, learned counsel submitted that even the issue of acceptance of resignation could not have been done by the remaining members as they were not the Board in the eyes of law as per Act.

11. Learned counsel for the Bank submitted that in view of the matter being contested and the Court being assisted by all the sides, he is not required to take a separate stand.

12. Having considered the rival contentions, the Court finds that a case for interference has been made out.

13. It would be expedient to reproduce the following provisions of the Act:

“14. Registered societies to have a managing committee etc. -

(1) xxxxx



(2) The management of registered Society shall be vested in managing committee constituted in accordance with the provisions of this Act and rules/byelaws of the society made under this Act.

Notwithstanding any thing contained in any provision of this Act or Rules Byelaws of the Society the maximum number of members including office bearer or office bearers in a managing committee of Society shall be seventeen in Apex and State level Society, fifteen in Central Co-operative Society and thirteen in Primary Society.

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41. Dissolution of Managing Committee.-

“(1) In the opinion of the Registrar, the Board of any Registered Society, the State Government has contributed to the share capital therein, or loan or financial aid has been provided by the State Government or loan has been provided on Government guarantee,

(i) is persistently making defaults or

(ii) is negligent in the performance of its duties imposed on it by this Act, the Rules or the Bye-laws, or

(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, he may, after giving opportunity to the Board/Managing Committee to state its objection, if any, by order with reasons in writing, supersede the Board of the Co-operative Society for a period not exceeding six months and order that all or any of its members may be disqualified from being elected to the Board of the Co-operative Society for a period to be specified in the order not exceeding five years. Registrar shall record every order passed under this Section in writing and inform the concerned Co-operative Society through registered post. The Board shall thereupon cease to function:

Provided that in case of Co-operative Society carrying on the business of banking,



provisions of Banking Regulation Act, 1949 shall also apply:

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(5) The Registrar may dissolve the Managing Committee of a registered society in case where-

(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; and shall appoint Administrator for the better management of the registered society;

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44AX. Restriction on number of Government Nominees.- *(1) There shall be only one Government nominee in the Managing Committee of the State Cooperative Bank and Central Co-operative Banks.*

xxxxx”

14. To begin with, the Court would refer to the issue of whether it was proper for the Registrar to have passed the order when the matter before him was simply to accept the resignation of the 4 elected members i.e., respondents no. 5 to 8. The question of propriety is equally important when State officials act while performing statutory duties. The role and power of every authority is defined. Admittedly, the respondents no. 5 to 8 had submitted their resignation to the Chairman of the Board i.e., the petitioner.



Thus, unless the Board took a decision or in the event he did not take a decision, it was incumbent upon them to directly approach the Registrar for non action on the so called resignation tendered by them. The Managing Director does not have the authority to take the resignation letters to the Registrar. Going further, even if it was brought before the Registrar, the Registrar was required to notice all the remaining members also and hear them on this issue and could not have unilaterally acted upon the same. Moreover and surprisingly, the Registrar has not dealt with the issue of acceptance of resignation and has gone on the presumption that it stood accepted. The Court holds that there cannot be any deemed acceptance of resignation. There has to be some sort of a formal order recording that a person has resigned leading to a vacancy. Nowhere from the pleadings, much less from the order impugned, there is even a whisper or the Court can infer that the resignations did stand accepted. Further, without going into whether such power was available to the Registrar or not, even if it is presumed for the moment that he had, first an order accepting such resignation had to be passed and thereafter again a notice was required to be served to the rest of the members because they were already elected and a vested right subsisted in them as to why the Board be not dissolved for having lost the minimum quorum



required for its existence. These two things admittedly have not been done.

15. Now coming to the main point of whether factually/legally the quorum of 50% for invoking Section 41(5) of the Act was available, the Court finds that though the total number of members of the Board is 15, but it does not mean that is mandatorily required to be filled, which is clear from the wording of Section 14(2) which fixes the '*maximum*' number of members in a Central Co-operative Society. In this case particularly, when the constitution of the Board was only of 10 members, as has been clarified and certified by learned counsel for the State from the records which had been called for, clearly the onus cannot be shifted on the Board or any penal consequences or adverse inference can be drawn from the Board not having 4/5 members out of a total 15. In any view of the matter, the State being the final authority to take a stand with regard to the constitution of the Board and learned counsel for the State on repeated queries and also from the records available with him certifying that only 10 members were constituted in the Board of the Bank, even if it accepted that out of nine, four had resigned 5 members were available and working and, thus, there was no occasion to invoke the provisions of Section 41(5) of the Act, as has been done. As far



as reliance by learned counsel for respondents no. 5 to 8 on the decision of this Court with regard to the automatic dissolution, the Court would only indicate that once it had held that the number did not satisfy invocation of Section 41(5) of the Act as the minimum number required was present, the ratio of the decisions relied upon by learned counsel for the respondents no. 5 to 8, will not be applicable in the facts and circumstances of the present case. As far as the decision of the Hon'ble Supreme Court with regard to prevailing of the statutory provision over the bye-laws is concerned, here also, the Court would only observe that without advertent to the requirement of there being 6 persons in the bye-laws, admittedly 5 elected persons were available and this makes it 50% of the constituted Board which according to the State was 10 in number. Thus, the ratio of the present two cases would also not apply in the facts and circumstances of the present case. Moreover, curtaining the life of a duly elected body in a casual and summary manner, as has been done in the present case, is arbitrary and unjustified.

16. For reasons aforesaid, the order impugned stands set aside. The Board dissolved by the order impugned of the Bank stands restored.



17. At this juncture, the Court would indicate that it is inclined to follow the ratio of the Hon’ble Supreme Court in **State of M.P. vs. Sanjay Nagayach** (supra) where the Board was directed to function for the remaining period of its life. Accordingly, it is directed that the Board dissolved by the impugned order would function for the period beyond its original five years term as from the day it was superseded till today, the period would stand added to the original life of the Board.

18. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

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