

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10644 of 2023

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Vinay Kumar Son of Sri Umesh Kumar Verma, resident of Village- Sri Ram Bigha, P.O. and P.S.- Gurua, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The District Cooperative Officer, Gaya, District- Gaya.
4. The Sub-Divisional Officer, Sadar Gaya-cum-Returning Officer, Cooperative Societies, Gaya.
5. The Magadh Central Cooperative Bank Ltd., Gaya through the Administrator.
6. The Managing Director, The Magadh Central Cooperative Bank Ltd., Gaya.
7. The Bihar State Election Authority, 32, Harding Road, Patna through the Chief Election Officer.
8. The Secretary, the Bihar State Election Authority, 32 Harding Road, Patna.
9. The Advisor, the Bihar State Election Authority, 32, Harding Road, Patna.
10. The Primary Agriculture Credit Cooperative Societies, Gurua, P.O. and P.S. Gurua, District- Gaya through its Co-opted Chairman.
11. Om Prakash Nirala, Son of Ramavarat Nirala, resident of village - Rahim Bigha, P.O. - Bara (Chakand), P.S. - Chakand, District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Pranav Kumar, Shrishti Singh, Advocates
For the State	:	Mr. Uday Shankar Sharan Singh, G.P19
For the Respondent/s	:	Mr. Mukesh Kumar Thakur, Advocate
		Mr. Sanjay Kumar, Advocate
For the Respondent No. 11		Mr. S.B.K. Mangalam, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.AV. JUDGMENT
Date : 18-07-2024

Heard Mr. Y.V. Giri, learned Senior Counsel
duly assisted by Mr. Pranav Kumar for the petitioner, Mr. Uday
Shankar Sharan Singh, G.P. 19 and Mr. S.B.K. Mangalam, learned
counsel for the respondent no. 11.

(A) PRAYER:

2. The present writ petition has been filed for
the following relief(s):

(i) to issue an appropriate
order/direction in the nature of certiorari for quashing
the order bearing memo no. 1708 dated 03.07.2023
issued under the signature of the Additional Chief
Secretary, Department of Cooperative, Government of
Bihar, wherein it has been held that the co-
opted/nominated Chairman can neither vote in the
election to Vyapaar Mandal, District Central Co-
operative Bank nor can they be a candidate for any post
on the managing committee or board of directors
(Annexure-14, Pg.87);

(ii) to issue an appropriate
order/direction in the nature of mandamus commanding
the respondents not to give effect to the order bearing
memo no. 1708 dated 03.07.2023 or issue any direction
for removing the petitioner from the post of Chairman,
Primary Agriculture Credit Cooperative Society Gurua,
Gaya or Chairman of the Magadh Central Cooperative



Bank Ltd., Gaya;

(iii) to issue an appropriate order/direction in the nature of mandamus commanding the respondents not to proceed with election dispute no. 75/2023 (Om Prakash Nirala v. Sri Vinay Kumar) filed for a declaration to the effect that the election of petitioner (Vinay Kumar) in election is void.

(B) FACTS :

3. The matrix of facts giving rise to the present writ petition is/are as follows:-

(C) CASE OF THE PETITIONER :

4. For the constitution of the Managing Committee of the Magadh Central Cooperative Bank Ltd., Gaya (henceforth for short 'the Bank'), an election was held on 18.01.2018. In the said election, Umesh Kumar Verma, the father of the petitioner was elected as its Chairman. Again, while serving as the Chairman of 'the Bank', his father contested and was elected as the Chairman of the Gurua 'PACCS' in the election held on 16.12.2019.

5. Later, one of the Executive Member of the Gurua 'PACCS' namely Jugeshwar Yadav offered his resignation. It was placed before the Managing Committee on 22.07.2022/ 12.08.2022 in which through agenda no. 3, it was accepted and the petitioner herein was nominated as a member of Gurua 'PACCS'.

6. Subsequently, in the meeting of the



Managing Committee on 15.11.2022, Sri Umesh Kumar Verma, Chairman of Gurua 'PACCS' submitted his resignation citing ailment. On 26.11.2022, in the meeting of Gurua 'PACCS' in terms of section 14(9) of Bihar Cooperative Societies Act, 1935 (henceforth for short 'the Act'), the Executive Members of the Committee nominated the petitioner as the Chairman.

7. Meanwhile, since the term of office bearers of elected Managing Committee including the Chairman and other members of 'the Bank' was coming to an end on 18.01.2023, the State Election Authority issued a detailed programme for holding its election and the respondent no. 4, the Sub Divisional Officer, Sadar, Gaya was appointed as the Returning Officer who accordingly prepared a draft voter list.

8. The schedule of election notified by the State Election Authority was/were as follows:

(i) last date for submission of list of delegates of the letter no. 123 District Central Cooperative Bank by the Managing Director to the District Cooperative Officer.
(19.01.2023)

(ii) last date for forwarding the list of delegates by the District Cooperative Officer to the Returning Officer.
(21.01.2023)



(iii) publication of Provisional Voter list by the Returning Officer.

(23.01.2023)

(iv) date for publication of general notice for filing of claim and objection against the provisional voter list and the date for its disposal.

(23.01.2023)

(v) period in which any objection can be filed against the draft voter list.

(23.01.2023 to 02.02.2023)

(vi) publication of final voter list.

(04.02.2023)

(vii) last date for filing of nomination paper.

(28.03.2023)

(viii) date of scrutiny of nomination paper.

(01.04.2023 & 03.04.2023)

(ix) date of withdrawal of nomination paper.

(05.04.2023)

(x) date of election.

(12.04.2023)

(xi) date of counting and declaration of result.

(12.04.2023)



9. The petitioner by virtue of being the Chairman of the Gurua 'PACCS' was included in the voter list. The respondent no. 11 made objection on 27.01.2023. Pursuant thereto, the respondent no. 4, the Sub-Divisional Officer, Sadar, Gaya called for a guideline from the State Election Authority vide letter no. 118 dated 01.02.2023. In response thereto, the respondent no. 9, the Advisor, State Election Authority issued a guideline to the respondent no. 4 through letter no. 264 dated 02.02.2023 stating that the nominated Chairman can also be a voter in the election of 'the Bank'.

10. After the receipt of letter no. 264 dated 02.02.2023, the respondent no. 4 again sought some guideline from respondent no. 8, the Secretary, State Election Authority vide letter no. 123 dated 03.02.2023 and in response thereto, issued a letter vide memo no. 288 dated 03.02.2023, wherein it was opined that there is no provision of Acting Chairman in the Act or in Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as "the Rules").

11. Accordingly, respondent no. 4 was directed to seek opinion in this regard from the respondent no. 3, the District Cooperative Officer. It was also mentioned in the letter that the District Cooperative Officer and the respondent no. 6, the Managing Director had been informed.

12. Thereafter, the respondent no. 4 through



letter no. 132 dated 04.02.2023 informed the respondent no. 11 to be present for the hearing to be held on 04.02.2023 on the objection preferred by him.

13. Thereafter, on 04.02.2023, a detailed hearing on the objection raised by respondent no. 11 took place in the presence of the petitioner and on the same day, the objection filed by the respondent no. 11 in light of the guidelines / advisory issued by the State Election Authority was rejected vide letter no. 136 dated 04.02.2023 was rejected.

14. The final voter list was accordingly published as per the schedule/ date fixed by the State Election Authority for further election. Since the date fixed by the State Election Authority for publication of final voter list was 04.02.2023, it was mandatory on the part of the respondent no. 4 to publish the voter list on the said itself i.e. 04.02.2023. In the said order, it was clearly stated that the petitioner had produced the proceedings of meetings dated 22.07.2022, 12.08.2022, 15.11.2022 and 26.11.2022 along with the text of Section 14(9) of 'the Act' which shows that he is a nominated member and had not become a member through co-option.

15. The respondent no. 11 being aggrieved by the said action, approached this Hon'ble Court in CWJC No. 3699 of 2023 for several reliefs including for the quashing of the order dated



04.02.2023 passed by the respondent no. 4.

16. The matter was heard and vide an order dated 22.03.2023, the Court quashed the order dated 04.02.2023 passed by the respondent no. 4 remanding the matter back to the Principal Secretary, Co-operative Department, Government of Bihar, Patna for adjudicating the issue whether the co-opted/nominated / Acting Chairman of 'the PACCS' can vote and contest any election relating to the Co- operative Society Bank. The writ application was disposed of.

17. In compliance of the order dated 22.03.2023, the respondent-Secretary, Cooperative Department, Bihar, Patna took up the matter and passed an order bearing memo no. 922 dated 31.03.2023 and placing reliance on the different orders of the Court, and after noting that the election has already been notified, it was recorded that the petition could not be entertained. However, liberty was granted to the parties to raise their issue by preferring an election dispute under section 48(8) of the Act, read with Rule 21(X) of the Rules, as the Secretary did not have the jurisdiction to adjudicate the issue. Accordingly, the matter was disposed of (Annexure-10 to the petition).

18. The respondent no. 11 filed a contempt petition before this Court on 20.04.2023 bearing MJC No. 1127 of



2023 for violation of the order dated 22.03.2023. The matter was heard on 26.04.2023 and was further directed to be listed on the 10.05.2023.

19. Thereafter, the respondent - Secretary, Cooperative Department passed another order bearing memo no. 1168 dated 09.05.2023 by which it was held that for co-option and nomination in the Managing Committee, two separate provisions have been made by way of the 2013 Amendment in the Act. Section 14(4) (b) of the Act deals with co-option while proviso to Section 14(9) is in relation to a nominated member. The provision of Clause 25(3) of the "Primary Agriculture Credit Cooperative Society Bye- laws" (henceforth for short the "PACCS bye-laws") has been incorporated prior to the aforesaid 2013 amendment, in the year 2008. Thus, 'the Act' has an overriding effect over bye-laws of the Society and the nominated member of the Managing Committee is allowed to exercise all powers and rights which can be exercised by an elected member. Therefore, a nominated member in view of the above provision of the Act can contest and vote in the election of a Cooperative Society. The respondent - Secretary, Cooperative Department accordingly held that since the petitioner has all the rights which is entitled and can be exercised by an elected member, is thus entitled to become a voter in the election of 'the Bank' (Annexure-12 to the petition).



20. The contempt application was once again taken up on 10.05.2023 and directed to be listed on 11.05.2023 with a direction for the personal appearance of Principal Secretary, Cooperative Department. On 11.05.2023, in course of hearing, it was found that while passing the order dated 09.05.2023, the respondent - Secretary, Cooperative Department had granted no opportunity to the petitioner and the respondent no. 11 and accordingly, four weeks' time was granted for passing an order afresh in terms of the order passed in CWJC No. 3699 of 2023 after hearing the parties.

21. Accordingly, the Additional Chief Secretary, Cooperative Department, Bihar passed third order bearing memo no. 1708 dated 03.07.2023, whereunder it has been held that in the absence of a provision for a nominated, co-opted or Acting Chairman, respondent no. 11 is not a duly elected Chairman under either the Act or the Bye-laws. Hence, the petitioner could not have represented 'the Gurua PACCS'. It was thus held that he cannot vote or contest in the election for the Bank. It is to be noted here that the election process had come to an end and petitioner was by then an elected chairman of 'the Bank'. (Annexure-14 to the writ petition).

22. After the passing of the order dated 03.07.2023 by the Additional Chief Secretary, Cooperative Department, the respondent no. 11 withdrew MJC No. 1127 of 2023.



23. Aggrieved by the said order dated 03.07.2024, it was now the turn of the petitioner to prefer the writ petition.

24. Mr. Y.V. Giri, learned Senior Counsel for the petitioner submits that the order dated 03.07.2023 is without jurisdiction as the respondent no. 1, the Additional Chief Secretary, Co-operative Department could not have decided an election dispute which is in terms of section 48(8) of 'the Act' and Rule 21(X) of 'the Rules' which is vested with the Registrar, Cooperative Societies. According to him, the election process is/was over and the only avenue with the respondent no. 11 was to prefer election petition which he did but not before filing contempt petition which led to the passing of the two orders post completion of the election.

25. He further submits that the order dated 03.07.2023 is also bad on the ground that merely through the consent of the parties, the jurisdiction cannot be abrogated or surrendered before any authority which does not otherwise have jurisdiction.

26. Learned Senior Counsel submits that a perusal of the order dated 03.07.2023 passed by the respondent no. 1 would show that no finding has been arrived on the point as to whether the petitioner was a co- opted / nominated / or elected member. In that background, he wrongly arrived at a conclusion that



the petitioner does not have any voting right in the election to 'the Bank' especially when the consequences of being a "co-opted" and "nominated" member are very different.

27. He further submits that the respondent no. 1 further failed to consider the fact that the petitioner is a nominated member of Gurua 'PACCS' in terms of first proviso to section 14(9) and is not a co-opted member under section 14(4)(b) of 'the Act'. Such determination is imperative as a perusal of the aforementioned provisions would indicate that while a co-opted member cannot vote in any election of the Cooperative Society or be eligible to be elected as an office bearer of the Board, such prohibition is not stipulated for a nominated member.

28. Learned Senior Counsel submits that such a finding was especially indispensable as the sole basis of objection of the respondent no. 11 herein was that the petitioner was a co-opted member and no such objection would survive if the petitioner was nominated.

29. This Court finds it appropriate to incorporate both section 14(9) as also section 14(4)(b) of 'the Act' which read as follows:-

"Section 14(9)- Notwithstanding anything contained in any provision of rules or the Bye Laws of any Co-operative Society the term of office of



elected members of the Board and its Office-bearers shall be five years from the date of election and the term of Office-bearers shall be co-terminus with the term of the Board:

Provided that the Board may fill a casual vacancy on the Board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of the Board is less than half of its original term;

Provided further that if the term of the Board remains for more than half of its original term and if any vacancy arises for elected member or Office-bearers for any reason whatsoever, the Bihar State Election Authority shall fill the vacancy for remaining period by holding bye-election.”

“Section14(4)(b) - Notwithstanding anything contained in any provision of this Act, or rules framed there under or the Bye-laws of any co-operative Society, persons having experience in the field of Banking, Management, Finance or Specialization in any other field relating to the objects and activities undertaken by the Co-operative Society may be co-opted to the Board of the society.

Provided that the number of such co-opted members shall not exceed two and that number shall be in addition to the specified maximum number prescribed in the sub-section(2);

Provided further that such co-opted members shall not have the right to vote in any election of the Co-operative Society in their capacity as



such members or to be eligible to be elected as Office-bearers of the Board.

Provided further also that the Functional Directors of a Co-operative Society shall also be the members of the Board and such members shall be excluded for the purpose of counting the total number of Directors specified in the sub-section (2)."

30. He submits that while 'the Act' and 'the Rules' are silent on the process of appointment of Chairman/office bearer when a casual vacancy arises and when the term of the Board is less than half of its original term, Rule 25(3) of the Bye-laws deals with such a circumstance. However, it has wrongly been concluded in the order that a Chairman can only be "elected", and there is no other mechanism provided for choosing the Chairman. This conclusion is misplaced as it is based on an incorrect reading of Rule 25(3) of the Bye-laws. The term used in this Rule is "Hindi". It is noteworthy that the operative term in the clause is as opposed to, and translates to selection and not election.

31. It is the submission of the learned Senior Counsel that the clause merely prescribes that the members will choose their Chairman and such choice can be exercised either through election or nomination. However, ignoring the same, it has been concluded that the clause requires the members to elect a



Chairman. A perusal of the proceeding dated 26.11.2022 would show that the petitioner has been nominated as the Chairman and all the members of the board agreed to such nomination. Therefore, mere absence of the nomenclature of election would not have made it different as a candidate nominated will be deemed to have been elected.

32. Learned Senior Counsel submits that the earlier reasoned order dated 09.05.2023 of the same authority was not even discussed in the order dated 03.07.2023. He submits that the order dated 09.05.2023 discussed clause 25(3) of the bye-laws of 'the PACCS' with a conjoint reading of section 14(9) of 'the Act' and rightly held that the nominated member of the Managing Committee has all the powers and rights which can be exercised by an elected member. Further, it is significant to note that the previous order dated 09.05.2023 had proceeded with the understanding that the petitioner was a nominated member as opposed to the subsequent order dated 03.07.2023, in which the status of the petitioner has not been determined.

33. He submits that this discrepancy between both the orders is/are fatal and irreconcilable. This is especially when the subsequent order has not assigned any reason for differing with the finding in relation to the status of the petitioner as referred to in



the previous order dated 09.05.2023.

34. In support of the writ petition, learned Senior counsel cited the case of Patna High Court in the **Bihar State Election Commission & Ors. Vs. Meena Devi & Ors.** reported in **2008(4) PLJR 114** with specific reference to para 6 which read as follows:

6. It may be true that there was failure on the part of the Election Commission in providing appropriate stamps and as a result a large number of votes stand cancelled. The question is whether this question could at all be gone in a writ petition. Article 243(0) makes it clear that no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided by law made by the Legislature of the States. There- fore, Article 243(0) makes it abundantly clear that any right of any citizen pertaining to any election to any panchayat can be protected through an election petition to be presented before the prescribed authority.

35. He further cited the order of Hon'ble Apex Court in **Dinesh Prasad Yadav Vs. The State of Bihar & Ors.** Reported in **1995 Supp (1) SCC 340** and paragraph 9 read as follows:-



“9. The expression 'election', therefore, means selection of a person by vote or even otherwise. When a person is nominated by way of selection on the basis of a given criteria from amongst several persons, then in the broader sense he is elected to the office. We are of the view that the expression 'elections', in the first proviso to Section 14(10) of the Act, has been used in the broader sense. It includes election by ballot as well as the choice by nomination. This interpretation would make Rule 22(2) of the Rules workable. Section 14(2) of the Act vests the management of a registered society in a Managing Committee constituted in accordance with the Rules. Section 14(4) further provides that even up to two-third members of the Managing Committee can be nominated. Sub-section (8) of Section 14 further imposes bar on the members of the Managing Committee for re-election after they have held two consecutive terms. Rule 22(2) read with Section 14(2) of the Act makes it abundantly clear that constitution of the Managing Committee is to be treated as complete only when the elections by ballot as well as the nominations are finalized. Even otherwise, to fulfill the avowed object of the Act and to encourage and promote the cooperative movement in the State, it is necessary that the Managing Committee as constituted under Rule 22(2) of the Rules should be given its full tenure of three cooperative years.



Having provided for three years' term in office to the Managing Committee of a society, it could not be the intention of the legislature to leave it to the State Government to reduce the same to as short a period as three weeks, which would be a mockery. We, therefore, hold that in the first proviso to Section 14(10) the expression "the cooperative year in which elections are held" means not only the elections by way of ballot, but also the nominations under the Act. The net result is that the term of the Managing Committee under the Act and the Rules is to commence from the beginning of the cooperative year in which the nominations by the State Government are completed and the Managing Committee is constituted in terms of Rule 22(2) of the Rules."

36. Learned Senior Counsel submits that it is clear that when a person is nominated, he will be deemed to have been elected. He took this Court to yet another Patna High Court order in the case of **Virendra Kumar Vs. Bihar Vidhan Sabha reported in 2008 (2) PLJR 197** with reference to para 10 and read as follows;

10. So far as co-opted members are concerned, they are co-opted in terms of Rule 21(P) of the rules by the elected members. Thus, for all practical purposes, they are to be treated as members. It is for this reason that under the Act or



the Rules there is no other separate provision for challenging the validity of their co-option. If they are treated as elected members then the provision applicable to elected members would apply and their co-option could be challenged in an election petition. Thus, it would be seen that it is with regard to elected and co-opted members, the validity of their election including on the ground of ineligibility can be a subject matter of challenge by way of an election petition. If that be so then in terms of Division Bench judgment referred to above, validity of their memberships of the Managing Committee could not be assailed except by way of election petition.

37. Learned Senior counsel lastly cited the decision of Patna High Court in the case of **Ramzan Ansari & Ors. Vs. the State of Bihar & Ors.** reported in **2009 (1) PLJR 861** with reference to para 13.

“13. It appears that the amendments have been introduced with the intention to bring about mass movement in the agricultural sector with the help of cooperative movement involving mass participation. It is evident that the Legislature has attached great importance to the same by enacting the Election Act, whereby a separate Election Authority has been constituted to conduct the elections for all the cooperative societies in the



State. Furthermore, it appears to us that these two enactments are in furtherance of Part-IX of the Constitution of India, which is headed "Panchayat". We are, therefore, of the view that any other view would be tantamount to interference with the will of the Legislature read with Part-IX of the Constitution of India. This Court must desist from taking any step which will have the propensity to delay or deflect implementation of the will of the Legislature."

38. It is the contention on behalf of the petitioner is that there cannot be two orders operating at the same time. In the present order dated 03.07.2023, nowhere the previous order dated 09.05.2023 has been discussed or observed that it has been withdrawn or modified to that extent. Thus, the present order is also assailable on this ground.

39. Learned Senior counsel concludes by submitting that the respondent no. 11 herein has already filed an Election Dispute Case no. 75/2023 before the Court of Registrar, Co-operative Societies, Bihar, Patna where the election of the petitioner herein as the Chairman of the Magadh Central Co- operative Bank Ltd., Gaya has been challenged. However, the order dated 03.07.2023 will prejudice the cause of the petitioner. He submits that the election petition was preferred on 28.06.2024 and this fact was not placed



before the Court and it was later that on 03.07.2024 that the order came to be passed. He thus submits that the order be set aside.

40. Mr. S.B.K. Mangalam, learned counsel representing the respondent no. 11 submits that he had earlier challenged the inclusion of name of the petitioner in the voter list for the election to 'the Bank' by filing C.W.J.C. No. 3699 of 2023 which was disposed of vide an order dated 22.03.2023.

41. Further, after the disposal of C.W.J.C. No.3699 of 2023, an order was passed by the respondent-Principal Secretary, Cooperative Department on 31.03.2023 and instead of deciding the issue, she observed that since the election process is on, the parties will have opportunity to raise all their issues by preferring election dispute under Section 48 of 'the Act' read with Rule- 21 (X) of 'the Rules' and based upon that order, the nomination of the writ petitioner was accepted by the Returning Officer on 03.04.2023 notwithstanding that the respondent no. 11 had filed his objection before the Returning Officer on 01.04.2023.

42. He further submits that a contempt application bearing M.J.C. No.1127 of 2023 was filed by the deponent before this Court for deliberate disobedience of the order passed by this Hon'ble Court in C.W.J.C. No.3699 of 2023.

43. In the aforesaid contempt application also, the writ



petitioner had appeared through a counsel though he was not a party in it and in his presence, different orders were passed by a coordinate Bench hearing the contempt application.

44. It is his submission that the result of election was declared by the Returning Officer. The writ petitioner won the election for the post of Chairman of 'the Bank'.

45. He submits that ultimately the office of the Additional Chief Secretary passed the order on 03.07.2023 against which the petitioner has challenged before this Court by way of the present writ petition.

46. Learned counsel submits that since the election was held and the result of election declared on 12.04.2023, for filing of an election petition before the Registrar Cooperative Societies, the limitation period is 60 days from the date of declaration of result of election, the respondent no. 11 was duty bound to file his election petition before the Registrar, Cooperative Society under Section 48 of 'the Act' before the expiry of last date. However, it happened much after the disposal of C.W.J.C. No.3699 of 2023.

47. Learned counsel submits that the writ petitioner had accepted the finality of the judgment of this Court in C.W.J.C. No.3699 of 2023 and thus waived his right to challenge the order



passed by the learned Additional Chief Secretary on 03.07.2023.

48. It is his further submission that when the writ petitioner himself is a nominated member of Gurua 'PACCS', he cannot occupy the position of Chairman of Society in view of the provisions contained in paragraph no.25 (3) of the Bye-Laws of the Society which has been considered by the Additional Chief Secretary in his detailed order dated 03.07.2023.

49. At this stage, this Court again deems it appropriate to incorporate 25(3) of the Co-operative Bye-laws which read as follows:

25(3) प्रबन्ध समिति किसी कारणवश चुने गये सदस्यों एवं ऊपर (खंड 2) के अनुसार सहयोजित (Co-opted) सदस्य की जगह खाली रहने पर प्रबन्ध समिति द्वारा बची हुई अवधि अथवा अगली आम सभा जब चुनाव/सहयोजन द्वारा रिक्त स्थान को भरा जायेगा जो भी पहले हो तक के लिये सहयोजन द्वारा भरा जायेगा। प्रबन्ध समिति के सभापति के स्थान किसी कारणवश रिक्त होने पर प्रबन्ध समिति चुने गये सदस्यों में से किसी एक को बची हुई अवधि के लिये अथवा अगले आम सभा में जब सभापति का चुनाव होगा जो भी पहले हो तक के लिये प्रबन्ध समिति एक सभापति चुनेंगे।

50. He submits that only the elected members of Managing Committee of a Society can be further elected as the Chairman, in case any vacancy arises in the office. Nominated members of the Managing Committee cannot be elected as the Chairman. Thus, the order passed by the Respondent no.1 does not



suffer from any infirmity.

51. Learned counsel representing the respondent no. 11 submits that when the petitioner was not entitled to become the Chairman of 'Gurua PACCS'; he could not have been either a voter or a person to contest and/or become the Chairman of the Bank.

52. Learned counsel has placed reliance on an order of the Hon'ble Apex Court in the case of **Union Territory of Ladakh & Ors. Vs. Jammu and Kashmir National Conference & Ors. (Civil Appeal No. 5707 of 2018)** disposed of on **06.09.2023** with reference to para nos. 22, 23 and 37 which read as follows:-

"22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

23. A detailed dive into the sequence of events is apposite. R1 was before the concerned authorities, by way of representation, well in time, and much before even the Notification dated 02/05.08.2023 was published, by impugning the Notification dated



26.07.2023 which denied it the Plough symbol. R1 had moved the ECI, which opined, by way of communication dated 18.07.2023 that the ECI does not allocate any symbol for local body elections as the same falls within the domain of the State Election Commission concerned. The ECI stated that as there is no Legislative Assembly in the Union Territory of Ladakh and the 1968 Order does not provide for recognition to parties in a Union Territory without a Legislative Assembly, R1 could not be recognised in the Union Territory of Ladakh. However, it was further noted that as R1 is a recognized State Party in the Union Territory of Jammu and Kashmir with its reserved symbol being the Plough, it could avail concession under Paragraph 10 of the 1968

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are



taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time¹⁰, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated. hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.”

53. Learned counsel concludes by submitting that the order dated 03.07.2024 is just and proper and the writ petition deserves outright dismissal.

D. THE STAND OF THE STATE :

54. Mr. Uday Shankar Sharan Singh, learned G.P. -19 submits that the election petition preferred by the respondent no. 11 is already pending where the parties can raise all the issues. Though he justified the order dated 03.07.2024 passed by the Additional Chief Secretary conceded that there are two contradictory orders dated 09.05.2023 as also 03.07.2023 passed by the respondents and the earlier order dated 09.05.2023 has neither been discussed nor differed in the order in question.



(E) FINDING :

55. In this case, when an earlier bench was hearing the matter on 25.01.2024 taking note of the aforesaid facts that an election petition has already been preferred by the respondent no. 11, the following order was passed:

Heard Mr. Y.V. Giri, learned senior counsel assisted by Ms. Shrishti Singh and Mr. Pranav Kumar, learned counsel appearing on behalf of the petitioner; Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the private respondent; Mr. Mukesh Kumar Thakur, learned counsel appearing on behalf of the Election Authority and Mr. Uday Shankar Sharan Singh, learned GP-19 assisted by Mr. Swapnil Kumar Singh, learned AC to GP-19 for the State.

2. Learned counsel for the petitioner submitted that the Registrar, Cooperative societies, will be influenced by the order passed by the Additional Chief Secretary dated 28.06.2023 if the same is not set aside by this Court. He alleges that the respondent no. 11 had deliberately and willfully not informed the Additional Chief Secretary at any point of time or before this Court on or before the contempt



petition was disposed of on 05.07.2023 about filing of election petition on 28.06.2023 before the Registrar.

3. Considering the fact that election petition has already been filed by the respondent no. 11 before the Registrar, Co-operative Society on 28.06.2023. It has to be taken note of the fact that the order was passed by the Additional Chief AHG06.2023 in compliance of the order of this Court in CWJC No. 3699 of 2023 and the contempt petition was pending during the said time, which was disposed as noted above on 05.07.2023 after the order was passed by the Additional Chief Secretary on 09.05.2023 or during the contempt proceeding when the order was passed by the Additional Chief Secretary contained in Memo No. 1708 dated 03.07.2023.

4. This Court is not concerned, as to whether, the Additional Chief Secretary was having jurisdiction to exercise into the matter and the issue placed before. The concern of this Court is, as to why, respondent no. 11 had not informed in the contempt proceeding that he had already availed remedy by way of filing election petition on 28.06.2023 before the Registrar, Cooperative societies.



5. The respondent no. 7 (sic 11) is directed to file his personal affidavit giving reason, as to why, a proceeding of contempt be not initiated against him considering the fact that in contempt proceeding, the Court was not informed about the election petition, which was filed on 28.06.2023 by the respondent no. 7 (sic 11) while the MJC No. 1127 of 2023 was pending and was finally disposed of on 05.07.2023.

6. The matter is required to be heard only to consider, as to whether, respondent no. 11 has wilfully and deliberately committed contempt by suppressing the vital information in the contempt proceeding in MJC No. 1127 of 2023.

7. Personal appearance of the Registrar, Cooperative Societies is dispensed with.

8. Re-notify the present writ petition on 13.02.2024.

56. Pursuant to the order dated 25.01.2024 by the Coordinate Bench, supplementary affidavit on behalf of the respondent no. 11 has been filed and paragraph nos. 10 and 11 read as follows:-



“10. That, since the election to the post of Chairman was conducted on 12.05.2023 and limitation for filing the election petition was expired on 12.07.2023, the deponent had filed an election petition, challenging the election of writ petitioner on 28.06,2023.

11. That, there was no need at all to inform the Hon'ble Court hearing the contempt application that an election petition has been filed challenging the election of writ petitioner since the two proceeding i.e. contempt proceeding before, this Hon'ble Court and the proceeding of election petition had no connection at all tpendo sd of zegberwonos and the proceeding They were separate and independent proceeding one under the contempt of Court's Act and the other under the provisions of Bihar Cooperative Societies Act.

57. This Court deems it fit and proper to close the said chapter but not before observing that the respondent no. 11 ought to have informed the Contempt Court about the filing of the election petition when it chose to withdraw the same.

58. Having heard the rival submissions and on perusal of the materials on record, this Court would firstly like to deal with the petitioner's entry into Gurua 'PACCS' as its member followed by his taking over the Chairmanship. Jugeshwar Yadav, one of the elected member of Gurua 'PACCS' resigned and the Managing



Committee on 22.07.2022/12.08.2022 nominated the petitioner as a member [**in terms of Section 14(9) of ‘the Act’**].

59. Later the father of the petitioner, Umesh Kumar Verma who was the Chairman of Gurua ‘PACCS’ resigned citing ill health on 15.11.2022. In the subsequent meeting held on 26.11.2022, the Executive Members of the Committee nominated the petitioner as the Chairman.

60. It is important to incorporate here that neither the nomination of the petitioner as a member of the Gurua ‘PACCS’ nor his further nomination/election as its Chairman was/were ever challenged at any point of time.

61. By virtue of being the Chairman of the Gurua ‘PACCS’, the petitioner became entitled to become delegate/voter to the election that was to be held for ‘the Bank’. His inclusion in the voter list was now challenged by the respondent no. 11. After seeking guidelines from the appropriate authority, it was negated by the respondent no. 4 on 04.02.2023 (Annexure -8 to the writ petition).

62. This followed the filing of CWJC No. 3699 of 2023 by the respondent no. 11 herein and a Bench of this Court vide an order dated 22.03.2023 after quashing the order dated 04.02.2023



passed by the respondent no. 4, remanded the matter back to the Principal Secretary, Cooperative Department to decide as to whether the co-opted or nominated Acting Chairman of the Gurua 'PACCS' can vote and contest any election of 'the Bank'.

63. The respondent- Secretary took up the matter and passed an order dated 31.03.2023 observing that as the election has already been notified, no petition can be entertained and if the parties have any dispute, the same can be taken care of under Section 48(8) of 'the Act' read with Rule 20 (10) of 'the Rules' by filing an election dispute.

64. The respondent no. 11 herein however, preferred contempt petition vide MJC No. 1127 of 2023. It was taken up on 26.04.2023 and posted for 10.05.2023 after taking note of the submission of the learned counsel for the petitioner (respondent no. 11 herein) that no positive order has been passed by the Principal Secretary, the matter was posted on 10.05.2023.

65. Then came the second order vide memo no. 1168 dated 09.05.2023 passed by the Principal Secretary, Cooperative Department, Bihar Patna by which quoting section 14(4) (b) of 'the Act' vis-a-vis the proviso to Section 14 (9) of the said Act, it held that there are two separate and distinct provisions dealing with co-option and nomination and as such a nominated member of the Managing



Committee has been allowed to exercise all powers and rights which can be exercised by the elected members. In that background, he can vote as also contest in an election of the Cooperative Society. It further held that the provision of Clause 25(3) of 'the PACCS bye-laws' is of the year 2008, whereas the aforesaid sections of 'the Act' dealt with in the order came by 2013 amendment and this will have an overriding effect.

66. The contempt matter was taken up on 10.05.2023 and later on 11.05.2023 whereafter it was directed to be posted after four weeks allowing the respondents to pass fresh order.

67. It was in this circumstances that the third order came to be passed by the Additional Chief Secretary, Co-operative Department, Bihar Patna vide memo no. 1708 dated 03.07.2023 by which it held that the petitioner herein is not a duly elected Chairman under 'the Act' or bye-laws and thus cannot represent Garua 'PACCS'. As such, he cannot vote and contest in the election. This followed the withdrawal of the contempt petition by the respondent no. 11.

68. Thus, now the position is that two orders of 'the Department' are there. This is beside the earlier order dated 31.03.2023 where the respondent-Secretary had observed that now that the election has been announced, the parties will have the option



to later move by filing an election petition. First is the order dated 09.05.2023 holding that the petitioner in terms of having been nominated and not co-opted, can vote and contest the election to 'the Bank'. The second order dated 03.07.2023 on the other hand observed that he having not been elected cannot either vote or contest. The order dated 03.07.2023 neither takes note of nor differs with the order dated 09.05.2023. It is to be noted that an election dispute meanwhile preferred by the respondent no. 11 is pending before the Registrar, Cooperative Societies Bihar, Patna.

69. The petitioner being the Chairman of the Gurua 'PACCS' was allowed to become a delegate/voter for the election to the Bank. Accordingly, he contested and later became its Chairman. The respondent no. 11 is aggrieved to the inclusion of the petitioner in the voter list and his subsequent election to 'the Bank'. Upon repeated query from the learned counsel for the respondent no. 11 as to whether there is any bar on inclusion of a Chairman of a 'PACCS' as a voter for the election to 'the Bank', learned counsel repeatedly shrugged of the said question and instead justified the passing of the order of the Additional Chief Secretary dated 03.07.2023.

70. An election petition is already pending before the respondent- Registrar, Cooperative Societies, Bihar Patna and this Court would like the said petition to be decided on its own merits



based on the materials/facts/laws/rules on record. However, the fact remains that there are three orders in the present case. First, the order of the Secretary, Cooperative Department, Bihar Patna dated 31.03.2023 by which it took note of the fact that since election process is on and as such, if any one is aggrieved, can later move by way of election petition. This in the considered opinion of the Court was the correct view.

71. However, due to contempt petition, another order came to be passed on 09.05.2023 in which the Secretary adjudicated the matter and decided that a nominated member for practical purpose can function as a Chairman and become delegate of the voter. As the story moves further, contempt petition was taken up on 10.05.2023 and 11.05.2023 and adjourned for four weeks. Thereafter came the third order dated 03.07.2023 by the Additional Chief Secretary taking a contrary stand but without discussing and/or differing with the order dated 09.05.2023.

72. Learned Senior Counsel for the petitioner in the aforesaid background rightly submitted that this can very well prejudice the election petition.

73. In the case of **Dinesh Prasad Yadav (supra)**, the Hon'ble Apex Court held when a person is nominated by way of selection on the basis of a given criteria, he will be deemed to have



been elected to the office. It accordingly held that election also means beside ballot, the nomination.

74. Again, in the case of **Bihar State Election Commission (supra)**, Patna High Court clearly held that any irregularity/illegality can be questioned by filing an election petition.

75. So far as the case cited by the respondent no. 11 in the case of **Union Territory of Ladakh & Ors. (supra)** is concerned, this Court with great respect observe that the case cited does not apply in the present case. No glaring irregularity has been brought out to justify interference in an election process/result. In fact, in paragraph 37 of the said order, the Hon'ble Apex Court clearly observed that the Court shall usually maintain the hands of approach with the solitary objective of ensuring that the election which are manifestation of the people are taken to its logical conclusion without delay or directions. Thus, here, the inclusion of the petitioner is/was questioned which could very well have been taken care of in the election petition which according to the facts on record has already been filed.

(G) CONCLUSION :

76. Having discussed all the facts/pleadings/case laws, in the opinion of the Court, the stand taken by the Secretary, Co-



operative Department Bihar Patna on 31.03.2023 was absolutely correct wherein it was observed that since the election is on, the parties will have the option of challenging it by way of election petition.

77. The subsequent order dated 09.05.2023 as also 03.07.2023 by the Secretary and the Additional Chief Secretary respectively when the election process was over for all practical purposes, made the election petition a non-starter. Worse, the last order dated 03.07.2023 has not even discussed the earlier order dated 09.05.2023.

78. In the opinion of the Court, the election was on, the petitioner by virtue of being in the voter list subsequently contested and elected Chairman of 'the Bank', in that background, his election could have been challenged only by way of election petition. There is/was no other way to remove a duly elected person from the post.

79. In that background, this Court holds that since Election Dispute Case no. 75/2023 is pending before the Registrar, Cooperative Societies, Bihar Patna, the parties are free to approach and take their respective stand/raise all issues before it who shall after hearing the parties and perusing the records, will pass an order without being prejudiced by any of the orders passed by the respondents and discussed above. To ease the pressure off the



Registrar, Co-operative Societies, Bihar Patna, the Court sets aside both the orders vide memo no. 1168 dated 09.05.2023 (Annexure-12) as also the order/memo no. 1708 dated 03.07.2023 (Annexure-14).

80. The writ petition is disposed of.

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	08.07.2024
Uploading Date	18.07.2024
Transmission Date	

