

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18676 of 2025

=====

Arun Kumar Singh son of Shiv Shankar Singh, Resident of Village- Siripur,
Police Station - Ghorasahan, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Cooperative Society, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, New Secretariat, Bihar, Patna.
3. The Registrar, Cooperative Societies, Bihar, Patna.
4. The Bihar State Election Authority, Harding Road, Patna through its Secretary.
5. The District Magistrate, East Champaran, at Motihari.
6. The District Cooperative Officer, East Champaran, at Motihari.
7. The Motihari Central Cooperative Bank, Motihari through its Managing Director.
8. The Managing Director, the Motihari Central Cooperative Bank, Motihari.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Adv. Mr.Sanjay Kumar
For the State	:	Mr. Birju Prasad, GP 13 Ms. Shweta Anand, AC to GP 13
For respondent no. 4	:	Mr. Mukesh Kumar Thakur
For the intervenor	:	Mr. Vikash Kumar Singh
For the Bank	:	Mr. Bindhyachal Rai

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 12-01-2026 The present writ petition has been filed for quashing the Letter No. 2824, dated 10.10.2025, issued by the Joint Secretary, Bihar State Election Authority, whereby the process of preparation of voters' list for election to the post of Chairman of Motihari District Central Co-operative Bank Ltd. was initiated and further prayed for restraining the respondents from



proceeding with the election process.

2. I. A. No. 01 of 2025 has been filed by the petitioner seeking amendment in the relief portion of the main writ petition, which are as follow:

(i) For quashing Memo No. 3176, dated 10.12.2025, issued by the Joint Secretary, Bihar State Election Authority and for restraining the Bihar State Election Authority from proceeding in terms of the impugned notification and to act in accordance with the resolution of the Board of Directors, dated 25.11.2025, passed vide Proposal No. 12, whereby the post of Chairman has been filled by nomination by Board of Directors.

(ii) It is further prayed for directing the Bihar State Election Authority to refer the matter under Section 48 of the Bihar Co-operative Societies Act, 1935, to the Registrar, Co-operative Societies, regarding the alleged vacancy of the post of Chairman of Motihari District Central Co-operative Bank Ltd.

3. Considering the nature of prayer made in the interlocutory application, the same is allowed and the prayer will form part of the main writ petition.

4. The factual matrix of the case, in brief, is that, the election to the Managing Committee of the Motihari District Central Co-operative Bank Ltd. (hereinafter referred to as 'the



Central Co-operative Bank') was held on 13.04.2023 for statutory tenure of five years, which was to be completed on 13.04.2028. In the said election, Sri Sudarshan Prasad Singh was duly elected as the Chairman of the Managing Committee. Unfortunately, the elected Chairman died on 05.11.2024, i.e. just after one and a half years of his election as the Chairman of the Managing Committee. His death resulted in creation of vacancy of the Chairman of the Managing Committee when more than half of the original tenure of the Board was still remaining.

5. Thereafter, the Board of Directors of the Central Co-operative Bank, in its meeting held on 18.12.2024, vide Resolution No. 8, unanimously resolved to fill up the vacant post of Chairman of the Managing Committee through by-election invoking the provisions of second proviso to Section 14 (9) of the Bihar Co-operative Societies Act, 1935 (in short, 'the 1935 Act') and authorized the Managing Director to take all necessary steps in that regard.

6. However, despite such authorization, the Managing Director forwarded the said proposal, along with the relevant records, to the District Co-operative Officer -cum- Competent Authority, East Champaran, Motihari, after expiry of four months, on 19.04.2025, vide Letter No. 52.



7. The expenses for the election were thereafter deposited in accordance with the provisions of the Bihar Co-operative Societies Rules, 1959 (in short, 'the 1959 Rules'), and the District Co-operative Officer forwarded the proposal for holding the by-election to the Bihar State Election Authority on 24.04.2025.

8. Upon receipt of the said proposal, the Joint Secretary, Bihar State Election Authority issued notification, vide Letter No. 1815, dated 22.05.2025, for preparation of the voters' list and fixed 16.06.2025 as the date for final publication of the voters' list on the basis of cut-off date 30.04.2025.

9. After publication of the final voters' list, a writ petition, bearing C.W.J.C. No. 10116 of 2025 was filed before this Court challenging the said voters' list. The writ petition was disposed, vide order, dated 08.07.2025, granting liberty to the petitioners therein to file representation before the Bihar State Election Authority and directing the Bihar State Election Authority to decide the same by a reasoned and speaking order within three months from the date of filing of the representation.

10. Pursuant to the directions of this Court, the Bihar State Election Authority passed a reasoned and speaking order, vide Memo No. 2816, dated 09.10.2025. Since the statutory



period of 120 days had already expired while complying the order of this Court, dated 08.07.2025, the Bihar State Election Authority issued fresh instructions/notification, vide Letter No. 2824, dated 10.10.2025, whereby a new cut-off date of 30.09.2025 was fixed for preparation of the voters' list and 18.11.2025 was fixed as the date for final publication of the voters' list.

11. Subsequently, on 12.10.2025, the half tenure of the Board, i.e. two and a half years, expired. It is pertinent to mention here that the half tenure of the Board expired after notification dated 10.10.2025. The Managing Director, vide Letter No. 711, dated 15.11.2025, convened a meeting of the Board of Directors, scheduled to be held on 25.11.2025. The said meeting was convened with ten agendas; however, none of the agendas pertains to the nomination of the Chairman of the Central Co-operative Bank. In the meeting held on 25.11.2025, the petitioner was nominated for holding the post of Chairman, recording in the minutes that since the by-election of the vacant post of Chairman could not be held till 12.10.2025, the Board decided to make such nomination of the petitioner in exercise of the powers conferred under the first proviso to Section 14 (9) of the 1935 Act and in the light of the Clause 49 (B) [*sic.*, 36 (a)]



of the Bye-laws of the Motihari Central Co-operative Bank Ltd.

12. The first proviso to Section 14 (9) of the 1935 Act provides that if the casual vacancy arises in the Board and the remaining tenure of the Board is less than one-half of its original term, the Board may fill up such casual vacancy from the members belonging to the same class.

13. The Bihar State Election Authority vide Notification No. 3205, dated 12.12.2025, announced the election programme for various stages. As per the said notification, the dates for filing of nomination papers were fixed as 03.01.2026 and 05.01.2026; the dates for scrutiny of nomination papers were fixed on 06.01.2026 and 07.01.2026; the date for withdrawal of candidature was fixed on 09.01.2026; and the date of polling and counting on 16.01.2026.

14. Learned Senior Counsel appearing on behalf of the petitioner argued that the Bihar State Election Authority failed to conduct the by-election to the post of Chairman within a reasonable time after the vacancy arose due to the death of the Chairman. In such circumstances, the statutory mandate contained in the first proviso to Section 14 (9) of the 1935 Act stood automatically attracted, which empowers the Board of Directors to fill up the casual vacancy by nomination from



amongst the same class of members.

15. Learned Senior Counsel further submits that in view of the aforesaid statutory position, the Board of Directors, in its duly convened meeting held on 25.11.2025, lawfully exercised its jurisdiction and unanimously nominated the petitioner to hold the office of Chairman of the Central Co-operative Bank. The said nomination was approved by all the members present and was formally communicated to the Bihar State Election Authority, vide Letter No. 3649, dated 13.12.2025.

16. It is next submitted that the said statutory power is also reinforced by the Central Co-operative Bank's own bye-laws. Clause 36(a) of the Bye-laws specifically provides that whenever any vacancy occurs in the office of an office bearer, the Board of Directors shall fill up such vacancy from amongst themselves and the person, so elected, shall hold the office till the next general election.

17. It is further contended that the cause of action for exercise of power under Section 14 (9) of the 1935 Act does not arise from the mere date of vacancy, but from the stage when the vacancy is required to be filled up. Once more than half of the original term of the Board had expired, the statutory regime



stood altered and by operation of law, the power to fill up the casual vacancy stood vested exclusively in the Board of Directors under the first proviso to Section 14 (9) of the 1935 Act.

18. It is urged that in the present case, even though the vacancy arose on 05.11.2024, the Bihar State Election Authority admittedly failed to complete the by-election before the expiry of half of the term on 12.10.2025. Consequently, after the said cut-off date, the Board of Directors alone was competent in law to fill up the vacancy.

19. When the Board of Directors, in its meeting, dated 25.11.2025, nominated the petitioner as the Chairman, it did so in lawful exercise of the jurisdiction, which had accrued into it by virtue of the expiry of more than half of the original term. Therefore, once the Board had already exercised its lawful jurisdiction and filled the vacancy strictly in accordance with the 1935 Act and the Bye-laws of the Central Co-operative Bank, no vacancy remained on the post of Chairman. Consequently, the election notification, dated 10.12.2025, stood divested of any legal foundation and was rendered non-est in the eye of law.

20. An alternative argument has been made by learned



Senior Counsel that the Bihar Co-operative Societies (Amendment) Act, 2013, was enacted expressly in pursuance of the Constitution (Ninety Seventh Amendment) Act, 2011. This legislative intent is clearly manifested from the preamble of the Amendment Act itself, which records that the amendments were being carried out in pursuance of the Constitution (Ninety Seventh Amendment) Act, 2011.

21. Since the Ninety Seventh Constitutional Amendment, insofar as it relates to Co-operative Societies, has been declared unconstitutional/ ultra vires for want of ratification by the States. Consequently, the very constitutional foundation on the basis of which the Bihar Co-operative Societies (Amendment) Act, 2013 was enacted stands obliterated. [See, **Union of India v. Rajendra N. Shah and Another**, reported in **(2022) 19 SCC 520**).

22. Since the 2013 Amendment Act is expressly rooted in the 97th Constitutional Amendment, the preamble and the amendments introduced thereby, including the substituted scheme of Section 14 (9) of the 1935 Act and its proviso, lose its legal substratum and cannot be pressed into service.

23. In such a situation, Clause 36(a) of the Bye-laws of the Central Co-operative Bank will survive, which provides



that whenever any vacancy occurs in the office of an office bearer, the Board of Directors shall fill up such vacancy from amongst themselves and the person so elected shall hold office till the next general election, independently governs the issue and fully survives.

24. Lastly, it has been argued that even assuming any doubt or dispute subsisted in respect of the validity of the nomination, the Bihar State Election Authority was mandatorily required to refer the matter to the Registrar under Section 48 of the 1935 Act. Instead of adopting the statutory course, the Bihar State Election Authority has arbitrarily proceeded to notify the election, which is patently illegal, without jurisdiction and in clear violation of the statutory scheme.

25. Learned Senior Counsel relies upon the decisions of the Hon'ble Supreme Court, in the cases of **Union Territory of Ladakh and Others v. Jammu and Kashmir National Conference and Another**, reported in **2023 SCC OnLine SC 1140** and **Dinesh Prasad Yadav v. State of Bihar and others**, reported in **1995 Supp (1) SCC 340**.

26. On the other hand, learned Counsel for the respondent-Bihar State Election Authority argued that the present writ application is not maintainable and submits that it is



settled principle of law that once the election process has commenced, the same must be permitted to reach its logical conclusion and any grievance in respect thereof can be agitated only by way of an election petition.

27. It has further been argued that the vacancy on the post of Chairman arose on 05.11.2024, at the point of time when more than half of the original statutory tenure of the Board was still remaining. The Board, in its meeting, dated 18.12.2024, itself unanimously resolved to have the by-election conducted and duly authorized the Managing Director to take all necessary steps in that regard. Upon receipt of the said proposal on 24.04.2025, the Bihar State Election Authority initiated the process for preparation of the voters' list on 22.05.2025, which was well within the period when more than half of the tenure of the Board was subsisting.

28. It has further been submitted that merely because the election process could not be completed before the expiry of half of the tenure on 12.10.2025, the same does not divest the Bihar State Election Authority of the jurisdiction which had already validly accrued under the second proviso to Section 14 (9) of the 1935 Act. Therefore, the resolution of the Board, dated 25.11.2025, nominating the petitioner as the Chairman is



void *ab initio*, inasmuch as the vacancy had admittedly arisen prior to the half-term stage and, therefore, the first proviso to Section 14 (9) of the 1935 Act is wholly inapplicable to the facts of the present case.

29. The petitioner is deliberately attempting to stall the election process so as to continue on the post of Chairman without any democratic mandate. It has further been submitted that the Notification No. 3205, dated 12.12.2025, has not been challenged either in this writ application or in I .A No. 1 of 2025.

30. In support of his submission, learned Counsel relied on the decisions of the Hon'ble Supreme Court, in the cases of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others**, reported in (2001) 8 SCC 509 and **Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Others**, reported in (2006) 8 SCC 487.

31. Learned Counsel for the intervenor submits that pursuant to the notification, dated 10.12.2025, the intervenor has submitted his nomination for the post of Chairman, along with some other persons. The intervenor is the elected Chairman of



Sapahi Primary Agricultural Credit Society (PACS) and is an eligible candidate to contest the election for the post of Chairman of the Central Co-operative Bank.

32. It has been contended that the vacancy on the post of Chairman arose on 05.11.2024 due to the death of the elected Chairman, which was much prior to the expiry of half of the original tenure of the Board. In view of the clear and unambiguous language of the second proviso to Section 14 (9) of the 1935 Act, it was the statutory obligation of the Bihar State Election Authority to fill up the said vacancy by conducting a by-election.

33. It has further been submitted that the Bihar State Election Authority had already initiated the election process on 22.05.2025 by issuing directions for preparation of the voters' list, which is an integral and inseparable part of the election process. The first proviso to Section 14 (9) of the 1935 Act could have been attracted only if the casual vacancy had arisen after the expiry of half of the original tenure of the Board. Admittedly, in the present case, the vacancy arose on 05.11.2024, i.e., much prior to 12.10.2025, and, therefore, the first proviso to Section 14 (9) of the 1935 Act has no application whatsoever.



34. The resolution of the Board, dated 25.11.2025, nominating the petitioner as the Chairman is nothing but a colourable exercise of power, devised solely to defeat and frustrate the on-going election process. The said nomination is illegal also on account of procedural impropriety inasmuch as the agendas for the meeting of the Board, dated 15.11.2025, did not contain any proposal relating to nomination of the Chairman, rendering the decision vitiated.

35. It is lastly urged that once the election process had already commenced, this Court is barred from interfering with the same in view of Section 11 of the Bihar State Election Authority Act, 2008, coupled with the consistent law laid down by the Hon'ble Supreme Court that Courts ought not to interdict elections at an intermediate stage.

36. In support of his argument, learned Counsel relied on the decision of the Supreme Court, in the case of **Election Commission of India v. Shivaji and Others (AIR 1988 SC 61)**.

37. I have heard learned Counsel for the parties concerned and have perused the material available on records.

38. It is an admitted and undisputed fact that the vacancy on the post of Chairman arose on 05.11.2024, at the



point of time when more than half of the original statutory tenure of the Board was still remaining. The Board, in its meeting, dated 18.12.2024, unanimously resolved to have the said vacancy filled up through a by-election and authorized initiation of the statutory process. It is further undisputed that the Bihar State Election Authority had already initiated the election process on 22.05.2025 by issuing instructions for preparation of the voters' list, which is an integral and inseparable component of the election process. The half-term of the Board expired subsequently on 12.10.2025, i.e., after the election process had already commenced.

39. The preparation of the electoral roll is the intermediate stage in the process of election and as per the decision of the Supreme Court, in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha** (supra), the election process is set in motion by preparation of the electoral roll.

40. Section 14 (9) of the 1935 Act, 1935, is quoted herein below:

“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 members or Office-bearers for any reason whatsoever, the Bihar State Election Authority shall fill the vacancy for remaining period by holding bye-election.”

41. The applicability of the two proviso to Section 14 (9) of the 1935 Act is to be determined with reference to the date of vacancy and the commencement of the statutory election process and not on the fortuitous circumstance of delay in completion thereof. A plain reading of the provision leaves no iota of doubt that the decisive factor is the point of time when the vacancy arose.

42. In the facts of the present case, the process of bye-election started after creation of the vacancy and preparation of the electoral roll as per the second proviso to Section 14 (9) of the 135 Act. If a vacancy arose when more than half of the



tenure of the Board remains, filling up of such vacancy by way of by-election is mandated in the second proviso to Section 14 (9) of the 1935 Act, whereas nomination is permissible only if the vacancy arises after expiry of half of the original tenure of the Board.

43. In the present case, the vacancy arose on 05.11.2024, when more than two and a half years of the tenure of the Board was still remaining. Consequently, on the very date of creation of the vacancy, the second proviso to Section 14 (9) of the 1935 Act stood attracted, mandating that the vacancy be filled through by-election conducted by the Bihar State Election Authority. The Board of Directors immediately after creation of vacancy decided to fill it through by-election in its meeting, dated 18.12.2024. The subsequent expiry of half of the tenure of the Board on 12.10.2025 does not alter the legal position of the vacancy already created.

44. The decision relied upon by learned Senior Counsel for the petition, on **Dinesh Prasad Yadav** (supra) is not applicable in the facts of the present case. The alternative argument advanced on behalf of the petitioner is also not acceptable for the simple reason that the provisions of Section 14 (9) of the 1935 Act has not been declared *ultra vires* by any



court of law and the same remains in the statute book duly enacted by the competent Legislature.

45. The acceptance of the argument advanced on behalf of the petitioner would lead to an anomalous situation where a statutory obligation of holding by-election could be defeated merely by administrative delay, which is wholly impermissible in law.

46. Once the election process had commenced on 22.05.2025, the Board became *functus officio* to the extent of filling up the vacancy on the post of Chairman by way of nomination. Consequently, the nomination of the petitioner as the Chairman pursuant to the resolution, dated 25.11.2025, is *void ab initio* and *non est* in the eyes of law.

47. The prayer of the petitioner for referring the matter to the Registrar under Section 48 of the 1935 Act is also not acceptable in the facts of the present case. The said provision cannot be invoked as a device to interdict, stall or derail a statutory election process once it has lawfully commenced. Therefore, no direction for reference under Section 48 of the 1935 Act is either warranted or permissible in the facts of the present case.

48. In view of the foregoing discussion, this Court



comes to the conclusion that the vacancy in the office of Chairman arose on 05.11.2024 at the time when more than half of the statutory tenure of the Board was still remaining and, therefore, the second proviso to Section 14 (9) of the 1935 Act squarely applies. Once the statutory election process had lawfully been set in motion, the same could not have been nullified or frustrated by a subsequent resolution of the Board, dated 25.11.2025, nominating the petitioner as the Chairman, vide Resolution dated 25.11.2025, which, in the opinion of this Court, is *void ab initio* and *non est*.

49. The Bihar State Election Authority has acted strictly in accordance with the statutory mandate for holding by-election and any judicial interference at this stage would be contrary to law. The State Election Authority is directed to hold the election as per election schedule notified on 12.12.2025.

50. With the aforesaid declaration, direction and observation, this writ application is disposed.

AFR/
Prabhakar Anand/-

(Anil Kumar Sinha, J.)

U	✓		
---	---	--	--

