

(2023) 03 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3699 Of 2023

Om Prakash Nirala

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 22-03-2023

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 14(4)(b), 44BJ, 49

Citation : (2023) 03 PAT CK 0040

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : S.B.K. Mangalam, Awnish Kumar, Amit Prakash, Mukesh Kumar, Chakrapani

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Bihar State Election Authority, learned counsel for the Bank and learned counsel for the private respondent no. 11.

The issue which arises for consideration in the present writ application is whether a co-opted Chairman of the PACS is entitled to vote in the election of Magadh Central Cooperative Bank Limited, Gaya (hereinafter referred to as the 'Bank') or not.

Learned counsel for the petitioner submits that very briefly the facts are stated which have bearing on the adjudication of the case. It is next submitted that one Umesh Kumar Verma, the father of respondent no. 11 (M.L.A., Gurua Assembly Constituency) was elected as the Chairman of the Managing Committee of the Bank on 18.01.2018. He was elected as the Chairman of the Bank on the ground that he was elected the Chairman of Gurua PACS in the district of Gaya. The said Umesh Kumar Verma while being the Chairman of the Bank contested the election for the post of the Chairman of Gurua PACS in the election held on 16.12.2019. Further, since the terms of the office-bearer of the bank was coming

to an end on 18.01.2023, as such, the State Election Authority had issued a detailed programme for holding the election of the bank and respondent no. 4 was appointed as the Returning Officer for the election. The respondent no. 4 prepared a draft voter list (Annexure-1) for the purposes of election and published it for general information inviting claims and objections. The said voter list also included the name of respondent no. 11 as a voter in the election, his name was included on the ground that he is co-opted Chairman of Gurua PACS. The petitioner objected the inclusion of respondent no. 11 as a voter in the voter list for the ensuing bank election (Annexure-2) on the ground that co-opted member is not eligible to be enrolled as a voter.

The respondent no. 4, in pursuance of the objection raised by the petitioner by his objection dated 27.01.2023 (Annexure-2), sought clarification from the State Election Authority by his letter dated 01.02.2023 as to whether co-opted Chairman can be a voter or not in the election of the bank. The State Election Authority in pursuance of the query issued guidelines dated 02.02.2023 (Annexure-3) recording therein that the Chairman of defaulter or superseded PACS can also be a voter in the election of the District Cooperative Bank including a co-opted member (Annexure-3).

The respondent no. 4 again vide his letter dated 03.02.2023 sought guidelines from the respondent no. 7 in pursuance whereof the respondent no. 8 issued an Advisory vide his Memo No. 228, dated 03.02.2023 (Annexure-4) wherein it was clearly opined that there is no provision of Acting President in the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act') and, hence, respondent no. 4 was directed to seek clarification from the District Co-operative Officer-cum-Deputy Election Officer, Magadh Central Cooperative Bank Limited, Gaya.

The respondent no. 4 after receiving the communication dated 03.02.2023, fixed 04.02.2023 as the date for hearing the objection of the petitioner and, accordingly, issued notice to all the concerned including the petitioner and the respondent no. 11. The case was heard on 04.02.2023 at 11:00 a.m. and the petitioner appeared. It is submitted that for paucity of time on account of such short period of notice the petitioner was not in a position to contest the case in a proper manner, further on 04.02.2023 itself the hearing was concluded and order dated 04.02.2023 was passed (Annexure-6) by the respondent no. 7 rejecting the objection of the petitioner.

Learned counsel for the petitioner submits that the manner in which the order dated 04.02.2023 was passed necessitated the filing of the present writ petition. It is next submitted that though several reliefs have been claimed in the writ petition but the petitioner would be satisfied in the event the order dated 04.02.2023 passed by the respondent no. 4 is quashed.

It is next submitted that from perusal of the order dated 04.02.2023, it would manifest that the respondent no. 4 has extended favour to the respondent no. 11

for the reason that the respondent no. 4 has taken note of guidelines issued by the State Election Authority on 02.02.2023, wherein it is recorded that the co-opted Chairman along with Chairman of defaulter or superseded PACS can also be a voter in the election of the District Co-operative Bank Limited, Gaya but does not take into consideration the Advisory of the State Election Authority dated 03.02.2023, wherein it was opined that there is no provision of Acting President in the Act and, thus, the respondent no. 4 was directed to seek clarification from the D.C.O.-cum-District Deputy Election Officer, Magadh Central Cooperative Bank Limited, Gaya.

Learned counsel for the petitioner next submits that the guidelines dated 02.02.2023 and Advisory dated 03.02.2023 are dichotomic for the reason that in the guidelines it was recorded that co-opted member can vote along with the Chairman of a defaulter or a superseded PACS but then the Advisory dated 03.02.2023 clearly negated the earlier guidelines by directing the respondent no. 4 to seek clarification from the competent authority as aforesaid.

It is next submitted that it absolutely defies all logic, wisdom and reasonable administrative behaviour that as to why respondent no. 4 despite such clear Advisory issued by the State Election Authority chose not to seek clarification from the D.C.O.-cum-District Deputy Election Officer rather in a hurry proceeded to fix the date of hearing on 04.02.2023, when the Advisory itself was issued on 03.02.2023. Learned counsel submits that this aspect clearly reflects the mind set of the respondent no. 4. It is next submitted that from perusal of the order impugned, it does not even remotely reflect that the opinion of the D.C.O.-cum-District Deputy Election Officer, Magadh Central Cooperative Bank Limited, Gaya was obtained prior to rejection of the objection made by the petitioner with respect to the inclusion of the name of the respondent no. 11 in the voter list for the concerned bank. It is further submitted that since the Advisory issued by the State Election Authority had clearly recorded that there is no provision in the Act for the post of Acting Chairman then it was incumbent upon the respondent no. 4 to seek clarification as directed by the State Election Authority either from the D.C.O. or from any Superior Authority of the Co-operative Department but instead of proceeding in the manner directed, he proceeded rather in breach of the direction of the State Election Authority, on this sole ground the writ application can be allowed.

Learned counsel next submits that the State Election Authority has already notified the schedule for holding election of the Managing Committee of the bank but then the nomination has not started and respondent no. 11, who is an influential person being M.L.A. and son of Umesh Kumar Verma, has managed to enter the PACS by seeking resignation of an elected member. It is next submitted that the father and the son duo are only interested in usurping both the PACS and the bank.

Learned counsel next draws the attention of the Court to Section 14(4)(b) of the Act which reads as follows:-

"Section 14(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)."

Learned counsel next submits that from bare perusal of the proviso to Section 14(4)(b) of the Act, it would manifest that the same records that such co-opted member shall not have right to vote in any election of the Co-operative Society in their capacity, as such, member or to be eligible to be elected as office-bearer of the Board.

Learned counsel for the respondent no. 11 vehemently opposes the contention of the learned counsel for the petitioner and submits that the issue raised in the present writ application was not raised when objection dated 27.01.2023 was submitted by the petitioner objecting the inclusion of the respondent no. 11 till the final voter list is published/prepared. It is next submitted that the petitioner did not object the co-option of the respondent no. 11 when he was co-opted as a member of the Gurua PACS on 12.08.2022 nor he objected the co-option of the petitioner as the Chairman of Gurua PACS on 26.11.2022.

It is next submitted that though the petitioner is challenging the inclusion of the respondent no. 11 in the final voter list but then he chooses to remain silent with respect to the persons mentioned at Serial 78 and 98 in the final voter list who are the nominated Chairman and the Acting Chairman of different PACS. It is, thus, submitted that the petitioner is selectively challenging the candidature of the respondent no. 11 while choosing to ignore the inclusion of Ram Brikch Yadav (Serial 78 of the voter list nominated Chairman of the PACS) and Manju Devi (Acting Chairman of the PACS in the voter list as Serial 98).

Learned counsel next submits that there is a special provision for the banks in the Act as contained in Chapter VI(D) of the Act and relies on Section 44BJ of the Act, which 44BJ reads as follows:-

"Section 44BJ Co-option of professionals in Managing Committee of State Co-operative Bank and Central Co-operative Bank.- (1) The Managing Committee of the State Co-operative Bank or a Central Co-operative Bank shall have such

number of professionals as members having the professional qualifications or experience as may be stipulated by Reserve Bank of India.

(2) If members with professional qualifications or experience as stipulated by the Reserve Bank are not elected in number specified by the Reserve Bank of India in the Committee of the State Co-operative Bank or Central Co-operative Bank, to the extent of shortfall, such vacancies shall be filled by co-option of such persons in the committee and such co-opted members shall have full voting rights."

Learned counsel, thus, placing reliance on Section 44BJ of the Act submits that it clearly records that the Managing Committee of the State Co-operative Bank or a Central Co-operative Bank shall have such number of professionals as members having the professional qualifications or experience as may be stipulated by Reserve Bank of India and in the event if members with professional qualifications or experience as stipulated by the Reserve Bank of India are not elected in number specified by the Reserve Bank of India in the Committee of the State Co-operative Bank or Central Co-operative Bank, to the extent of shortfall, such vacancies shall be filled by co-option of such persons in the committee and such co-opted members shall have full voting rights. It is next submitted that Section 44BJ of the Act clearly stipulates that co-opted member of the bank shall have full voting rights. It is next submitted that Section 44BJ of the Act should be read along with Section 49 of the Act as the co-option of the petitioner as the Chairman of the PACS was done under Section 49 of the Act on the ground that one elected Member of the PACS had submitted his resignation and in his place the petitioner was co-opted as member of the PACS since he belongs to the same class.

Learned counsel for the petitioner rebuts the submission of the learned counsel for the respondent no. 11 and submits that as far as the first contention of the learned counsel for the respondent no. 11 is concerned, the same merits no consideration for the reason that there is absolutely no bar for the petitioner to raise issues which transpired after 27.01.2023. It is next submitted that as far as the second contention of the learned counsel for the respondent no. 11 is concerned, with respect to that it is submitted that since the Act provides for co-option of a person of the same class in event of a vacancy arising, as such, the petitioner could not have objected the co-option of the respondent no. 11 as co-opted member of Gurua PACS and subsequently being co-opted as the Chairman of the PACS. Learned counsel for the petitioner with respect to the third contention of the learned counsel for the respondent no. 11 submits that those two persons are also similarly situated like the respondent no. 11 since this fact now has been brought to the notice of the Court then illegality cannot be allowed to be perpetuated. Learned counsel next submits that as far as the submission of the learned counsel for the respondent no. 11 with respect to Chapter VI(D) of the Act and reliance placed on Section 44BJ of the Act is concerned, it is submitted that the provision is clear that it is with respect to the professionals who are not members and in the event if such professionals are having the

requisite qualification and experience as prescribed by the Reserve Bank of India then in that event they can be co-opted as a Member of the Managing Committee of the Bank with full voting right but then the question, which arises for consideration in the present case, is whether the respondent no. 11 being a co-opted Chairman of the PACS and in terms of the bye-laws of the bank, the Members of the PACS are voter whether in such a situation the respondent no. 11 can vote or contest the election of the bank is an issue which requires consideration.

Learned counsel appearing for the bank submits that since notification has been issued, as such, the Court should not interfere at this stage, in the event if the petitioner is aggrieved by the result of the election, he has remedy by way of filing an election petition.

Learned counsel for the petitioner submits that only the notification has been issued but till date nomination has not started and the issue which requires consideration is whether a co-opted Chairman of the PACS can become a voter in the ensuing election of the bank and contest the same.

After hearing the learned counsel for the parties, the Court comes to a considered conclusion that the order passed by the respondent no. 4 in breach of the Advisory issued by the State Election Authority cannot be countenanced and, thus, it is set aside.

Learned counsel for the State submits that presently the post of the Registrar, Co-operative Society is vacant, as such, the matter is remanded back before the Principal Secretary, Co-operative Department, Government of Bihar, Patna for adjudicating the issue whether the co-opted Chairman of the PACS, nominated Chairman of the PACS and Acting Chairman of the PACS can vote and contest any election relating to Co-operative Society Bank, in the present case.

The Court is conscious of the fact that the persons mentioned at Serial 78 and 98 of the final voter list is not before the Court, as such, no direction can be issued against them but since the matter is being remanded back, as such, the issue has been left open for the Principal Secretary, Co-operative Department, Government of Bihar, Patna to adjudicate for once and all so that the issue reaches a finality but before passing any order the Principal Secretary, Co-operative Department, Government of Bihar, Patna shall ensure that an opportunity of proper hearing is given to all the stake-holder. It is submitted that the nomination is also going to start soon, as such, the Secretary, Co-operative Department, Government of Bihar, Patna is directed to ensure that the issue is decided expeditiously keeping in mind that the elections are about to start.

Since the order has been passed in presence of the learned counsel for the parties, except those mentioned at Serial 78 and 98 of the final voter list, the Court directs that all the parties before this Court shall appear before the Principal Secretary, Co-operative Department, Government of Bihar, Patna at 05:00 p.m. on 24.03.2023 along with web copy of the order so that notices are

not required to be sent. The Principal Secretary, Co-operative Department, Government of Bihar, Patna shall take steps to inform Ram Briksh Yadav and Manju Devi at Serial 78 and 98 of the voter list through the respondent no. 4 or through any means which is expeditious and in accordance with law.

Accordingly, the writ application is disposed off.