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**(2014) 10 PAT CK 0016**  
**In the Patna High Court**  
**Case No : CWJC No. 17356 of 2014**

Pramila Sinha

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 16-10-2014

**Acts Referred:**

**Citation :** (2014) 4 PLJR 487

**Hon'ble Judges :** Jyoti Saran, J

**Bench :** Single Bench

**Advocate :** Santosh Kumar Singh, Advocate for the Appellant; Shailesh Kumar, Advocate for the Respondent

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## Judgement

Jyoti Saran, J.—Heard Mr. Santosh Kumar Singh, learned counsel appearing on behalf of the petitioner, counsel for the State and Mr. Purushottam Jha, learned counsel appearing on behalf of the respondent Nos. 10 and 11 i.e. the Managing Director and Branch Manager of the Patliputra Central Cooperative Bank. The petitioner is aggrieved by the rejection of his nomination by respondent No. 7 i.e. the Returning Officer-cum-Block Development Officer, Punpun, District-Patna filed for contesting the election to the post of Chairman, Paimar Primary Agricultural Credit Cooperative Society, Punpun, District-Patna vide order dated 22.9.2014 as contained in Annexure-1 to the writ petition.

2. A very short issue has been raised by Mr. Singh to contest the order impugned. It is submitted by Mr. Singh that on a mere recommendation made by the Branch Manager, Patliputra Central Cooperative Bank Ltd., Punpun Branch regarding certain loan obtained by the society of which the petitioner happens to be the Chairman in respect of purchase of wheat, that it was recommended that he be disqualified from contesting the election and the Returning Officer-cum-Block Development Officer has blindly followed the advice without applying his mind.

3. Appearing on behalf of the Branch Manager Mr. Purushottam Jha while

admitting to the fact that the loan was obtained by the society for purchase of the wheat submits that since the petitioner had executed a bond for repayment of the loan, hence on non-payment thereof, the petitioner would become disqualified for contesting the election.

4. It is rather surprising to note that on such a ridiculous request made by the Bank, the Returning Officer-cum-Block Development Officer who is expected to be aware of the legal provisions underlying the Bihar Cooperative Societies Act, the Rules framed thereunder as well as the law laid down by this Court on the issue, has mechanically proceeded to disqualify the petitioner from contesting the election by rejecting his nomination.

5. The facts are not in dispute that the loan obtained by the petitioner for purchase of wheat was on behalf of the society. The only objection that is being raised by Mr. Jha is that since the petitioner as the Chairman, has executed the bond for repayment of the loan, he would stand personally liable for its repayment and which would be sufficient to disqualify her.

6. Mr. Mukesh Kumar Thakur learned counsel for the State Election Authority with reference to Section 12 of the Bihar State Election Authority Act submits that a rejection of nomination would constitute an election dispute and thus the remedy for the petitioner would lie by filing an election petition before the prescribed authority under Section 10 of the Act and in support whereof learned counsel has relied upon a Division Bench judgment of this Court reported in 2010(3) PLJR 578 (N.S. Madhavan vs. Shyamdeo Prasad).

7. I have heard learned counsel for the parties and I have perused the materials on record as well as the judgments relied upon by the learned counsel for the contesting parties.

8. In so far as the issue whether a loan obtained by the petitioner as the Chairman of the Society can be termed to be a "personal loan" within the meaning of Rule 23(1)(b) of the Rules and whether she can be held a defaulter for non-payment thereof, the law stands well settled and a Chairman cannot be held to be a defaulter for a loan obtained for and on behalf of the Society. Mr. Singh has rightly relied upon a judgment of this Court reported in Nawal Kishore Prasad Singh and Another Vs. State of Bihar and Others, . In fact the issue stands settled way back in 1997 in a judgment reported in Mohammad Faizan and Another Vs. State of Bihar and Others, . It is rather surprising that even when the law on this issue stands settled yet the Returning Officer is completely ignorant on this aspect.

9. The other issue which invites the attention of this Court is the judgment of the Division Bench of this Court rendered in the case of N.S. Madhavan (supra) relied upon by Mr. Thakur to submit that appropriate remedy for the petitioner in the present case would be by way of election petition but the answer to the objection of Mr. Thakur lies in paragraphs 21 and 23 of the judgment itself where the Division Bench has held that although the proper remedy in case of rejection or

acceptance of nomination would be by way of an election dispute, a writ Court would not be precluded from exercising its writ jurisdiction in exceptional circumstances and the case in hand would not be a better example of an exceptional circumstances where a law settled as back as in 1997, yet the Returning Officer have turned ignorant thereto and have proceeded to reject the nomination of the petitioner for a loan obtained by the Society. This Court also had an occasion to consider a similar issue in the case of Abha Devi arising from C.W.J.C. No. 16142 of 2014 and taking note of the communications being issued by the different Banks in refusing to issue no objection certificate and/or requiring Returning Officer to reject the nomination for non-payment of dues, this Court had issued the following directions:--

"However, considering the grievance raised by the learned counsel for the petitioner, this Court is of the opinion that until such time that any final order is passed by the statutory authority under Section 41 of the Act or an order of disqualification is passed against any Chairman/Members of the Managing Committee holding them as "defaulters", the Returning Officer-cum-Block Development Officer concerned cannot reject any nomination on a mere request of the Bank or in absence of production of a "no dues certificate" by the intending candidate in view of the law laid down by this Court in the case of Mohammad Faizan and Another Vs. State of Bihar and Others, .

Let a copy of this order be handed over to Mr. Mukesh Kumar Thakur, learned counsel for the State Election Authority for its circulation amongst all connected with the ensuing election including the Returning Officer-cum-Block Development Officers concerned."

10. The directions of this" Court have been circulated by the State Election Authority vide Memo dated 24.9.2014 and which should be a guideline for the Returning Officer in the matter.

11. In the circumstances discussed the order dated 22.9.2014 of the Returning Officer-cum-Block Development Officer, Punpun, District-Patna, respondent No. 7 as contained in Annexure-1 cannot be upheld and is set aside. The Returning Officer-cum-Block Development Officer, Punpun is directed to accept the nomination of the petitioner and allow her to contest the election which is fixed on 21.10.2014 without raising any objections. The writ petition is allowed.