

(1957) 11 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial Case No. 785 of 1956

Yugal Kishore Sinha

APPELLANT

Vs

B.N. Rahtogi and Others

RESPONDENT

Date of Decision : 05-11-1957

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1958 Patna 154

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Shrideo Mishra, for the Appellant; Government Advocate and L.S. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—In this case the petitioner obtained a rule from this Court, under Article 226 of the Constitution against the opposite party to show cause why the election of opposite party 3, Sub-divisional Office, Sitamarhi, as Chairman of the Sitamarhi Kendriya Sahkarita Sangh (Central Co-operative Union Ltd.,) hereinafter referred to as the "Union", held on the 8th May, 1956, and, the order dated the 24th March, 1956 (Annexure D to the application), and, order dated 25th May, 1956 (Annexure E to the application), of the Registrar, Co-operative Societies, opposite party 1, rejecting the objection of the petitioner, should not be quashed, and, why opposite party 1 should not be called upon to call a general meeting of the share-holders and the representatives of the affiliated societies of the Union to get a non-official Chairman elected.

2. The learned Government Advocate has shown cause on behalf of opposite party 1 and 2, to whom also the rule was issued. He has also filed two counter-affidavits on behalf of opposite party 1 on the 17th January, 1957. Along with one of counter-affidavits sworn by Abid Rasul, he has filed several documents, marked Annexures A to E.

3. The petitioner is a share-holder, and, at present, one of the Directors of the Board of Directors of the Union elected at the Annual General Meeting of the Union On the 30th March, 1956. The petitioner was elected as the first non-official Chairman of the Union in 1948, and, he continued as such up to 1954. A Special General Meeting of the Union was called by the Deputy Registrar, Co-operative Societies, on the 27th of March, 1955, for amongst other purposes, the election of a new Board of Directors, by his notice dated the 11th March, 1955 (Annexure B to the application).

A meeting, accordingly, of the share-holders of the Union was held at Dumra on the 27th March, 1955, under the presidentship of the Additional Collector, Muzaffarpur, and, at the said meeting, opposite party 3, Sub-Divisional Officer, Sitamarhi, was elected as Chairman, and, opposite party 4 to 12 as Directors of the Union. This meeting, held on the 27th of March, 1955, has been challenged as illegal on several grounds, which are all specified in para 12 of the application.

4. Thereafter, one Ramsewak Singh, who was one of the Directors of the Union, moved this Court under Article 226, & on its rejection by this Court, an appeal was carried to the Supreme Court, where when the appeal came up for final hearing on the 28th February 1956, it was compromised between the parties. The Supreme Court, on the 26th February, 1956, passed the following order:

"It was agreed between the counsel for the parties, Mr. Purshottam Tricumdas for the appellant and Mr. Lal Narain Sinha for the respondents that the annual general meeting and the elections to the several offices of the Sitamarhi Kendriya Sahkarita Sangh (Central Cooperative Union Ltd.) be held, as early as practicable, by the end of March, 1956, under the supervision of the Development Secretary to the Government of Bihar or his nominee in accordance with the bye-laws of the Sangh and rules under the Act.

In view of the above, this appeal is withdrawn. There will be no order as to costs."

5. Meanwhile, the petitioner also referred the dispute with regard to the validity of the meeting held on the 27th March, 1955, u/s 48 (1) (c) of the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), hereinafter referred to as "the Act", to the Registrar, opposite party 1.

6. In the appeal pending before the Supreme Court, an affidavit was riled on behalf of opposite party 1 that whatever had been clone by the Deputy Registrar had been done in consultation with him and with his approval.

7. The petitioner, thereafter, filed an application before opposite party 1 for taking action u/s 48 (8) to state a case and refer it to the District Judge, Muzaffarpur, for a decision, as, on the affidavit filed in the Supreme Court, by the opposite party, it appeared that he himself was interested in the subject-matter of the objection made by the petitioner before him.

This application of the petitioner was rejected, and, ultimately, opposite party 1 disposed of the original objection of the petitioner by his order dated the 24th

March, 1956 (Annexure D to the application) by which he rejected the petition filed by the petitioner before him. This order of the Registrar is challenged by the petitioner on the main ground that as the Registrar was himself an interested party to the matter pending before him, it was against all principles of natural justice for opposite party 1 to have disposed of the reference of the dispute by the petitioner u/s 48 (1) (c) of the Act to him, himself.

8. In pursuance of the consent order passed by the Supreme Court and after the order passed by the Registrar, opposite party 1, on the 24th March, 1956, just mentioned, a General Meeting of the share-holders was held on the 30th March, 1956, at which a new Board of Directors was elected. Subsequently, at a meeting held of the elected Board of Directors, opposite party 3, Sub-Divisional Officer, Sitamarhi, although an official was elected Chairman of the newly elected Board of Directors in spite of the protest of the petitioner and the protest of one Shri Raghav Jha, another Director of the Board.

9. The petitioner, thereafter, filed a petition before opposite party 1, challenging the validity of the election of the Chairman, opposite party 3, but opposite party 1, the Registrar, rejected the petition of the petitioner by his order dated the 24th September, 1956 (Annexure E to the petition.)

9a. The petitioner, therefore, on the present application, under Article 226 of the Constitution, has challenged the meeting held on the 27th March, 1955 and also the order of the Registrar dated the 24th March, 1956 (Annexure D), and the meeting held on the 30th March, 1956, and on the 8th May, 1956, as also the order of the Registrar dated the 24th September, 1956 (Annexure E), as illegal being in contravention of the rules made by the State Government in exercise of the powers conferred on it by Section 66 (2) (vii) of the Act and also against the amended bye-laws of the Union.

10. Mr. A.B.N. Sinha, who represented the petitioner, challenged the meeting held on the 27th March, 1955, chiefly on three grounds: (1) that the meeting held on the 27th March, 1955, was not legally called or held or convened being in contravention of Section 35 (2) of the Act, (2) that there was evidence to show that the venue of the meeting was also in contravention of Section 35 (2) (a) of the Act and bye-law 26 and (3) that the Additional District Magistrate could not preside over the meeting in presence of more than one of the Directors of the said Union, and, therefore, three Directors being present at that meeting, the Additional District Magistrate could not preside at the meeting in contravention of bye-law 24 (2) of the Union.

11. In reply to the above objections, urged on behalf of the petitioner, Mr. Lal Narain Sinha, the learned Government Advocate, contended that whatever may be the illegalities or irregularities with regard to the meeting held On the 27th March, 1955, they cannot be re-agitated by the petitioner, because the validity of the meeting of the 27th March, 1955, was the subject-matter of the appeal before the Supreme Court, and, the matter was compromised by the order of the

Supreme Court dated the 28th February, 1956, the terms of which have already been reproduced in extenso in the earlier part of the judgment.

The learned Government Advocate reinforced his argument by further contending that in pursuance of the agreement arrived at in the Supreme Court, a General Meeting was held on the 30th March, 1956, in which the petitioner took part; and, as will appear from the proceedings of the Annual General Meeting held on the 30th March, 1956 (Annexure C to the counter-affidavit), the petitioner was not only present at the meeting, and not only he took part in the meeting, but he also proposed three persons as Directors for the New Board of Directors which proposal, after being seconded, was unanimously passed. It was therefore, submitted that the petitioner, in view of these two facts, was estopped from challenging the validity of the earlier meeting held on the 27th March, 1955.

12. In my judgment, the contention of the learned Government Advocate is well founded, and, it must prevail. The validity of the meeting held on the 27th March, 1955, was the subject-matter of the appeal before the Supreme Court, and, it was ultimately compromised between the parties, and, in terms of the compromise, the parties agreed to a fresh meeting being called for election of a new Board of Directors.

In pursuance of this compromise, the new meeting was called in terms of the compromise, and such a meeting was held on the 30th March, 1956, at which the petitioner was present, and, he took part in the proceedings of that meeting. He himself proposed three of the retiring Directors as members of the New Board, and, his proposal, after having been seconded, was duly passed unanimously. At this meeting, the petitioner was also proposed as a Director of the New Board, and he was so elected.

The petitioner proposed also the names of three other persons as office-bearers, which proposal, after being seconded, was unanimously passed. In these circumstances, the petitioner is estopped from contesting the validity of the meeting held on the 27th March, 1955, or, the order of the Registrar dated the 24th March, 1956 (Annexure D).

13. The first objection of Mr. A.B.N. Sinha, therefore, is overruled, and, it is held that, in the circumstances, it is not open to the petitioner to challenge the validity of either the meeting held on the 27th March, 1955, or, of the order of the Registrar dated the 24th March, 1956 (Annexure D).

14. Mr. A.B.N. Sinha then pressed his second objection with great vehemence. He submitted that the general meeting held on the 30th March, 1956, at which the new Board of Directors were elected and the meeting held on the 8th May, 1956, at which opposite party 3 was elected as official Chairman, were both illegal, being in contravention of Rule 6 of the statutory rules framed u/s 66 (2) (vii) of the Act. The said rule has been reproduced in paragraph 18 of the application, the correctness of which has not been challenged by the opposite party; on the other hand, both the parties have relied on the same.

15. As the determination of the second objection raised by the petitioner rests on the true construction of this rule, it is reproduced in ex-tenso at this very stage in order to appreciate the contentions put forward by Mr. A.B.N. Sinha on his view of the interpretation of the rule. The rule reads thus:

"The Management of a Central Bank/Union/ Banking Union shall be entrusted to a Board of Directors consisting of a Chairman & nine Directors of whom at least five shall be elected from amongst the representatives chosen by the affiliated societies and four from amongst preference share-holders and the Collector or the Sub-Divisional Officer, who may or may not be share-holder, shall be elected. Chairman by the elected Directors.

Provided that in exceptional cases an elected Director may be elected Chairman with the previous approval of the Registrar of Co-operative Societies Bihar and in such a case, the Board of Directors shall consist of only nine elected Directors including the Chairman. Other office bearers shall be elected from amongst the nine elected members of the Board. All elections referred to in this rule shall be held at Ordinary general meeting or at meeting called by the Registrar of Co-operative Societies, Bihar in exercise of the powers conferred on him by Rule 6 of the rules framed u/s 43 of the Co-operative Societies Act, 1912. Election of Directors shall be subject to the previous approval of the Registrar of Cooperative Societies, Bihar."

16. It may be stated here that Mr. A.B.N. Sinha does not challenge the validity of the meeting held on the 30th March 1956, or, of the ejection of the Directors at that meeting. He further admits the presence of the petitioner at both the meetings on the 30th March, 1956, and, the 8th May, 1956, but he seriously challenges the validity of the election of opposite party 3 as Chairman of the Board of the Union on the 8th May, 1956, and, therefore, he also challenges the validity of the meeting held on the 8th May, 1956.

17. Mr. A. B. N. Sinha has attacked the validity of the meeting held on the 8th May, 1956, for election of the Chairman on the ground that the Chairman must be elected at the Annual General Meeting, and not thereafter. He, therefore, contended that the Chairman could be elected on the 30th March, 1956, and not at a meeting specially convened for that purpose subsequent to the General Meeting as was done in the present case on the 8th May, 1956.

In support of his contention, he has very strongly relied on the rule, just quoted, which is mentioned in paragraph 18 of the application. He has particularly placed strong reliance on the words "All elections referred to in this rule shall be held at ordinary general meeting" and has submitted that these words are clear enough to indicate that not only the elections of the Directors and other office-bearers, but also of the Chairman must be held at the General Meeting as envisaged by the rule, and, therefore, he contended that the meeting held on the 8th May, 1956, for election of the Chairman, and, consequently the election of opposite party 3, as Chairman of the Board, are both illegal and, contrary to this

rule.

18. The interpretation, which Mr. A.B.N. Sinha contends for, is, however, not borne out by the rule itself. The words "the Collector or the Sub-Divisional Officer, who may or may not be share-holder shall be elected Chairman by the elected directors" clearly indicate that the Chairman shall be elected by the elected Directors.

The Directors are elected at the general meeting, at least five from amongst the representatives chosen by the affiliated societies and four from amongst preference share-holders, and, therefore, the Chairman can be elected, only after the election of the Directors is complete, and, as long as the Directors are not elected, the electors of the chairman are not in existence, and, therefore, the true meaning of the rule is that the chairman shall be elected by the Directors not at the General Meeting but at a meeting subsequently called after the general meeting for election of the Chairman.

This interpretation gets support also from the rule itself. The words "or at meeting called by the Registrar of Co-operative Societies, Bihar" occur in, and, after the words relied upon by Mr. A.B.N. Sinha, which together read as

"All elections referred to in this rule shall be held at ordinary general meeting or at meeting called by the Registrar of Co-operative Societies, Bihar"

19. It is a settled rule of construction that it is the duty of the Court whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise. It is equally well settled that if two constructions are possible the court must adopt that which will implement and which ensures the smooth and harmonious working of the Act or the rule and discard that which will stultify the apparent intention, and, therefore, eschew the other which leads to absurdity or gives rise to practical inconvenience or makes well-established provisions of existing law nugatory; *The State of Punjab Vs. Ajaib Singh and Another*, ; *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, ; *Raj Krushna Bose Vs. Binod Kanungo and Others*, ; and, *Tirath Singh v. Bachittar Singh* 1955-2 SCR 457: ((S) AIR 1955 SO 830) (D)."

20. The rule of harmonious construction, therefore, must be adopted in the instant case. It is true that the words "All elections referred to in this rule shall be held at ordinary general meeting", if literally given effect to, would be in conflict with the earlier provision in the rule that the Chairman shall be elected by the elected Directors, who are to be elected at the general meeting.

The use of the words "or at meeting called by the Registrar of Co-operative Societies, Bihar" are, therefore, clear indications that that provision was obviously meant for the election of the Chairman, which can be done only after the election of the Directors is complete, which can be done only at ordinary general meeting called by the Registrar. The words "or at meeting called by the Registrar", in my opinion, leave no manner of doubt that this provision in the

rule was inserted in the rule simply with a view to enable the Registrar to call a meeting of the elected Directors subsequent to the election of the Directors at the general meeting for electing the Chairman.

The construction, sought to be put by Mr. A.B.N. Sinha, would lead to absurd results, because it is impossible to elect a Chairman at the general meeting, because the rule says that such a Chairman must be elected by the elected Directors, and, therefore, unless and until the Directors are elected, who are elected only at the general meeting, the Chairman cannot be elected at all at the general meeting. For the election of the Chairman, therefore, it is necessary that a meeting should be called of the elected Directors subsequent to the general meeting for the purpose of electing the Chairman.

Mr. A.B.N. Sinha strongly relied on bye-law 24 (2) of the revised bye-laws of the Union and contended that the Chairman must be elected at an ordinary general meeting and not after it. Bye-law 24 (2) is in the following terms:

"24. An ordinary general meeting shall be convened within 4 months from the close of the statutory audit of the bank accounts of the preceding year. Its duties shall be-

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(2) TO elect for the ensuing year, in accordance with bye-law 29, a Board of Directors and office-bearers including the Chairman who shall preside at all meetings of the share-holders and the Deputy Chairman, honorary Secretary and Joint Secretary. In the absence of the Chairman, the Deputy Chairman, if any, will preside. If he is also absent, then a Director elected for the purpose will preside."

21. It is true that bye-law 24 (2) provides that an ordinary general meeting shall be convened within the period prescribed and, one of its duties shall be to elect for the ensuing year in accordance with bye-law 29, a Board of Directors and office-bearers including the Chairman, who shall preside at all meetings of the shareholders, and, therefore, according to bye-law 24 (2), the Chairman has to be elected at the ordinary general meeting, but this bye-law 24 (2) is obviously in conflict with the rule which has been quoted above, which is one of the statutory rules framed u/s 66 (2) (vii) of the Act.

In face of that statutory rule, the bye-law cannot prevail over it, and, therefore, it must yield to it. I, therefore, hold that bye-law 24 (2) being in conflict with the statutory rule, mentioned before, is ultra vires, and has no force of law.

22. In this connection, Mr. A.B.N. Sinha further submitted that the order of the Registrar dated the 24th September, 1956 (Annexure E), also supports his contention that the Chairman should be elected at the ordinary general meeting. In paragraph 5 of the order, the Registrar, opposite party 1 has said as below:

"If can be easily conceded that if the Registrar gives the necessary previous

permission for the election of an elected Director as Chairman, he should be elected as such at the ordinary general meeting."

Mr. Sinha, therefore, strongly relied on the above observation of the Registrar opposite party 1, in support of his contention. The interpretation of the Registrar, however, of the rule is not binding on this Court. There is no doubt that he has taken a wrong view of the true meaning of the rule, and, as such, no advantage can be taken by Mr. A.B.N. Sinha of the wrong interpretation put on the rule by the Registrar.

23. On the true construction and meaning of the rule, in my opinion, the contention of Mr. A.B.N. Sinha cannot be accepted as correct, and, accordingly, it is rejected.

24. Mr. A.B.N. Sinha, then, attacked the validity of the election of the Chairman, opposite party 3, on two grounds: (1) that the proviso mentioned in the rule under consideration provides that in exceptional cases, an elected Director may be elected Chairman with the previous approval of the Registrar, and in the present case, the approval of the Registrar had been obtained previously, and, therefore, no official Chairman could be elected; and, (2) that at the meeting held on the 8th May, 1956, the Registrar's approval was suppressed and was not at all placed at the meeting on the 8th May, 1956, and, therefore, the election of opposite party 3 as official Chairman was mala fide.

25. As regards the first ground of attack urged against the validity of the election of opposite party 3 as official Chairman of the Board, I must at once state that there is no force in it. The words used in the rule are:

"Provided that in exceptional cases an elected Director may be elected Chairman with the previous approval of the Registrar of Co-operative Societies".

The word is "may" and not "shall." Mr. A.B.N. Sinha urged that the word "may" has the force of "shall", and, therefore, although the word "may" has been used in the proviso, it implies a mandatory provision, and, as such, the moment the previous approval of the Registrar of the Cooperative Societies is obtained, it is mandatory for the elected Directors to elect from amongst themselves an elected Director as the Chairman of the Board. In my judgment, this contention is not correct on the true meaning and construction of the proviso.

The true meaning of the proviso is that if the previous approval of the Registrar of Cooperative Societies is obtained, then it is open to the elected Directors to elect a non-official from amongst the elected Directors as Chairman of the Board, if the elected Directors so choose and decide to do. But it is certainly not obligatory on them to elect a non-official Chairman, even when the previous approval of the Registrar has been obtained.

The elected Directors have been given the option and, they are to decide whether they will have an official Chairman or a non-official Chairman, even if the approval of the Registrar has been obtained. The very fact, that in the earlier

sentence in the proviso, the word "shall" has been used and in the subsequent sentence the word "may" has been used, clearly indicates that they have not been used in the same sense.

26. It is well settled that when two words of different import are used in a statute in two consecutive provisions, it cannot be maintained that they are used in the same sense: *The Member, Board of Revenue Vs. Arthur Paul Benthall*, .

27. In my opinion, therefore, the use of the word "shall" at one place and at the subsequent place "may" is clear manifestation of the intention of the rule-making power that option has been given to the elected Directors to choose a non-official Chairman if they so like and if the previous approval of the Registrar has been obtained or to choose an official Chairman even if the previous approval of the Registrar has been obtained to elect a non-official Chairman.

It is, therefore, not correct to say that because the previous approval of the Registrar had been obtained for election of a non-official Chairman, it was incumbent and obligatory on the elected Directors to elect only a non-official elected Director as the Chairman of the Board and not to elect an official Chairman of the Board, if they so liked.

28. A provision similar to the provision in the statutory rule to the effect that the Chairman shall be elected by the elected Directors provided that in exceptional cases an elected Director may be elected with the previous approval of the Registrar is to be found in bye-law 29 also. Amongst other things, bye-law 29 provides that:

"29. XX XX XX The Chairman shall be elected from amongst the elected members of the Board, provided however that the Sub-Divisional Officer may be elected Chairman though he may or may not be a share-holder and in this case he will be an additional and Ex-Officio Director.

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Bye-law 29 also, therefore, clearly provides that a non-official Chairman may be elected, but the choice lies with the elected Directors. This ground of attack, therefore, must fail and is, accordingly, rejected.

29. The second ground of attack was that the election of opposite party 3, as official Chairman, was mala fide, in that, the Registrar's approval was suppressed and not brought to the notice of the members of the elected Directors participating in the election of the Chairman on the 8th May, 1956.

30. The specific case of the petitioner on this point is to be found in paragraphs 22 and 23 of his application. His case is that the letter of approval was not placed at the meeting at all on the 8th May, 1956, by the Sub-Divisional Magistrate, opposite party 3, who was the President of the meeting and who happened also to be at the time the Chairman of the Board, and that due to this fraudulent suppression of the Registrar's approval of election of a non-official elected

Director as Chairman of the Board, an official Chairman was elected.

31. In reply to this contention, the learned Government Advocate referred to the counter-affidavit filed on behalf of opposite party 1 sworn by Mr. M.A.M. Gilani, Additional Under Secretary to the Government of Bihar, Development Department, to the following effect:

"1. That I was present on 30-3-1956 when the Annual General Meeting of the Central Co-operative Union Ltd., Sitamarhi, was held at Social Club, Dumra, on 30-3-1956.

2. That there was a compromise between the contesting parties. The election of the nine Directors was therefore held unanimously. One of the conditions of the compromise was that the Sub-Divisional Officer was to be the Chairman of the Co-operative Union."

The learned Government Advocate, therefore, contended that in view of this compromise, an official Chairman, namely, opposite party 3, was elected as Chairman of the Board. Mr. A.B.N. Sinha, however, relied on his own affidavit in reply to this counter-affidavit sworn by the petitioner, in which he has said in paragraph 2 that there was no compromise for the election of the Sub-Divisional Officer as the Chairman of the Sitamarhi Co-Operative Union.

In the first place, the affidavit sworn by Mr. M.A.M. Gilani, Additional Under Secretary to the Government of Bihar, Development Department, who is a responsible Government Officer, must be given preference over the affidavit sworn by the petitioner, and, therefore, I am not prepared to accept the statement of the petitioner that there was no compromise for the election of the Sub-Divisional Officer as the Chairman of the Sitamarhi Co-Operative Union.

I, therefore, relying on the counter-affidavit sworn by Mr. M.A.M. Gilani, have no hesitation to hold that there was a compromise between the parties, and, one of the conditions of the compromise was that the Sub-Divisional Officer was to be the Chairman of the Co-Operative Union, and, in accordance with the terms of the compromise, opposite party 3 was elected Chairman of the Board, although he was an official.

32. This fact is reinforced by the letter of the Sub-Divisional Officer, Sitamarhi, to Mr. N. K. Jha, Deputy Registrar, Head Quarters, Development (Co-operative) Department, Government of Bihar, sent on the 13th June, 1956, which is annexure "D" to the counter-affidavit of opposite party 1 sworn by Abid Rasul, Head Assistant, Development (Co-operative) Department, Bihar.

from this annexure "D", it appears that the Sub-Divisional Officer on the 13th June, 1956, in reply to the letter of the Deputy Registrar on the petition dated the 11th May, 1956, filed by the petitioner, stated as follows:

"It is true that a few days before the annual general meeting of the Sitamarhi Central Co-operative Union, I received an intimation from the Registrar that he

had allowed the election of a non-official Chairman if the Board of Directors decided accordingly. I was not meant to communicate this information to all the share-holders or any of them. Mr. Gillani. Under Secretary to Government, Development Department, and all other officers as well as a large number of shareholders were aware of this permission given by the Registrar.

It appears very strange that Thakur Yugal Kishore Sinha, at whose instance the Registrar had passed the order, was unaware of this. Nobody ever thought that Thakur Yugal Kishore Sinha was in the dark and there was no talk about it.....

As you know, there was a compromise at the last moment and an agreed list of the members of the Board of Directors was prepared. One of the specific conditions of compromise was that the Sub-Divisional Officer was to be the Chairman of the Co-operative Union Without this term there would not have been any compromise.

Thakur Yugal Kishore Sinha agreed to this on the 30th March but he broke his word and showed an uncompromising spirit by writing to me and to Sri Mathura Prasad Singh, the Deputy Chairman, the very next day requesting for election of a non-official Chairman. Though he had promised on the 30th March, that he would act in a spirit of compromise, within 24 hours he broke his word".

This letter also shows that the petitioner was a party to the compromise; one of the terms of which was that the Sub-divisional Officer was to be the Chairman of the Union

33. There is still another circumstance which shuts out the petitioner completely from Court. The petitioner admits in paragraph 19 that he approached the Registrar, opposite party 1, to accord his approval for election of a non-official Chairman. The petitioner, therefore, knew that he had asked the Registrar to accord sanction. This sanction was accorded by the Registrar, opposite party 1, on the 28th March, 1956.

The petitioner has admitted further in paragraph 20 of his application that the letter of the Registrar granting approval to the election of a non-official Chairman was addressed to the Deputy Registrar, and, copies thereof were sent to the Chairman of the said Union, namely, to the Sub-divisional Officer, Sitamarhi, and, also to the Honorary Secretary of the said Union and to the Assistant Registrar of Co-operative Societies.

The petitioner, therefore, was perfectly in the know of the whole thing, and therefore it was his duty to protest at the meeting of the 8th May 1956, to the proposal of an official as Chairman if he knew of the prior approval of the Registrar for election of a non-official Chairman of the Union, on the ground that the Registrar's approval had been obtained, or, to ask for postponement of the meeting on the ground that as the petitioner had moved the Registrar for granting approval for election of a non-official Chairman even assuming the petitioner did not know till then about the granting of the approval.

But he did not object on this ground at all. The petitioner has himself stated in paragraph 25 of his application the ground on which he protested to the meeting held on the 8th May, 1956, convened for election of the Chairman, and the only ground given by him therein is that he protested on the ground that after the approval for election of a non-official Chairman, the election of the Chairman must be by the general body, and not by the Board of Directors. He has further stated in paragraph 25 of his application that when his protest and the protest in writing of Raghav Jha, another Director, to the effect that

"after the approval of the Registrar for election of a non-official Chairman, the election of the Chairman must be by the general body and not by the Board of Directors"

was not paid heed to the petitioner and Shri Raghav Jha walked out of the meeting and did not participate at all. He has further stated that besides the petitioner and Raghav Jha, three other Directors did not participate in the election, and therefore, opposite party 3 was elected as Chairman of the Board of Directors at a meeting which was attended by only four out of nine Directors.

34. It is, therefore, clear from the conduct of the petitioner that he never challenged that an official should not be elected Chairman because of the prior approval of the Registrar. From paragraph 25 of his application, it is clear beyond any manner of doubt that the petitioner knew about the approval of the Registrar for election of a non-official Chairman, but in spite of it, he did not object to the election of the official Chairman at all.

The obvious reason was that as he was a party to the compromise, one of the terms of which was that the Sub-divisional Officer should be elected as Chairman of the Union, he did not make any objection on that ground, and, he objected only to the election of the Chairman at that meeting on the ground that the election of the Chairman must be done by the general body and not by the Board of Directors.

35. In my opinion, therefore, when the petitioner knew about the approval, and, it is obvious that the other elected Directors also knew about the Registrar's approval, and, when, as a matter of fact, all the persons participating in the meeting called on the 8th May, 1956, for election of the Chairman, knew of the Registrar's approval, there is no question of suppression, much less fraudulent suppression, of the Registrar's approval.

In my opinion, therefore, the petitioner by his own conduct is now estopped from challenging the election of opposite party 3 on this ground, because the proceeding of the meeting on the 8th May, 1956 or the election of opposite party 3 as Chairman of the Union was not at all mala fide, but it was in accordance with the compromise to which the petitioner was also a party.

36. It was also contended on behalf of the petitioner that the re-election of some Directors was also illegal. In reply to this, the learned Government Advocate

relied on bye-law 29, which provides that:

"The Directors shall retire annually but shall be eligible for re-election provided that one third of the members of the existing Board shall be re-elected with the previous approval of Registrar Co-operative Societies."

37. In the present case, it appears from the proceedings of the annual general meeting of the Union (Annexure C to the counter-affidavit) held on the 30th March, 1956, that the petitioner himself proposed three names as members of the new Board of Directors from among the retiring Board of Directors. The petitioner's proposal was seconded and thereafter unanimously passed.

The petitioner is, therefore, estopped from saying that the three persons, who were proposed by him and on whose proposal they were elected members of the new Board, could not be re-elected without the previous approval of the Registrar. This contention, therefore must be rejected.

38. For the reasons given above, all the contentions raised by Mr. A.B.N. Sinha fail, and accordingly, the rule is discharged.

39. In the result, the application fails, as no case has been made out for issuing any writ under Article 226 of the Constitution against any of the opposite party. The election of the official Chairman, opposite party 3, on the 8th May, 1956, is therefore, held to be valid and legal, and not Invalid as alleged by the petitioner. The application is, accordingly, dismissed. The petitioner will pay Rs. 200/- as costs to opposite party 1.

Ramaswami, C.J.

40. I agree.