

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23585 of 2019

1. Rama Shanker Roy, son of Late Lakshman Roy, resident of village- Tornj, P.O. Tornj Lahera, P.S. Kargahar, District- Rohtas at Sasaram.
2. Daya Shankar Rai, son of Vidya Rai, resident of village- Tornj, P.O. Tornj Lahera, P.S. Kargahar, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative, Government of Bihar, Patna.
3. The District Magistrate - cum - District Election Officer (Cooperative), Rohtas at Sasaram, District - Rohtas at Sasaram.
4. The District Cooperative Officer, Rohtas at Sasaram.
5. The Block Development Officer- cum- Returning Officer, 2019 Cooperative Election, Kargahar Block, District- Rohtas at Sasaram.
6. The Block Cooperative Officer, Kargahar, District- Rohtas at Sasaram.
7. Managing Committee of Riwan Primary Agriculture Credit Cooperative Society Ltd., Tornj P.O. Tornj Lahera, P.S. and Block - Kargahar, District- Rohtas at Sasaram through the Chairman.
8. Sri Rakesh Kumar Rai, son of Sri Ramashish Rai, resident of village- Tornj, P.O. Tornj Lahera, P.S. Kargahar, District-Rohtas at Sasaram, presently Chairman of the Managing Committee of Riwan Primary Agriculture Credit Cooperative Society Ltd., Tornj P.O. Tornj Lahera, P.S. and Block - Kargahar, District- Rohtas at Sasaram.
9. The State Election Authority, Bihar, Patna through the Chief Election Officer.
10. The Chief Election Officer, The State Election Authority, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	: Mr. S. B. K. Manglam, Advocate
For the State	: Mr. Uday Bhan Singh, AC to GP-19
For the State Election Authority	: Mr. Mukesh Kumar, Advocate
For the Respondent No.8	: Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-11-2019

Heard learned counsel for the petitioners; learned AC
to GP-19; learned counsel for the State Election Authority and



learned counsel for the respondent no. 8, who has *suo motu* appeared.

2. The petitioners have moved the Court for the following reliefs:

“(I) *For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent no.8 to produce on record the proceedings of the Managing Committee of Riwan Primary Agriculture Credit Co-operatives Societies Ltd. (hereinafter referred to as Riwan PACCS) dated 26.09.2019 and 30.09.2019 in which decision was taken for termination of the membership of the petitioners respectively and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI.*

(II) *For issuance of an appropriate writ in the nature of certiorari for quashing the letter dated 26.09.2019 and 30.09.2019 issued under the signature of the Respondent no.8 which are addressed to the petitioners respectively and by which the petitioners have been informed that the Managing Committee of the Respondent Cooperative Society in its meeting dated 26.09.2019 and 30.09.2019 had decided to terminate the membership of the petitioners respectively on the ground that :-*

(a) *No reason has been mentioned in the letter of Respondent no.8 for which the petitioners’ membership has been terminated;*

(b) *The reply of the petitioners have been rejected on the ground that it is not satisfactory;*

(c) *Even the reasons mentioned in the notice issued to the petitioners on 11.09.2019 does not attract any of the provision as contained in paragraph nos. 12 and 13 of the Model Bye-Laws of the Primary Agriculture Credit Cooperative Society Ltd.*

(III) *Consequent upon quashing of the aforesaid order by which the petitioners’ membership has been*



illegally terminated, this Hon'ble Court may further issue an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to include the name of the petitioners in the voter list prepared for holding election of the Managing Committee of the Respondent Society and allow the petitioners to avail all the benefits available to a member of the Respondent Society viz. right to contest the election and right to vote.

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3. The petitioners allege that their memberships of the concerned PACS have been terminated on totally vague and *non est* ground of them having made wrong recommendation contrary to the bye-laws and interest of the society.

4. Learned counsel for the petitioners submitted that besides the notice being totally vague as no details were given, in any view of the matter, such cannot be a ground for termination of the membership and, at best, the recommendations could have been rejected. It was submitted that notice and action based on such notice being totally *malafide* and unsustainable, ought to be interfered by the Court in its writ jurisdiction under Article 226 of the Constitution of India as *prima facie*, it is established that action is totally *malafide*. He further submitted that as per the bye-law 12 of the PAC bye-laws, such cannot be ground for termination of membership.



5. Though learned for the State and State Election Authority have opined that there is alternative remedy for the petitioners to move before the Registrar, Co-operative Societies, Bihar, Patna under Section 48 of the Bihar Co-operative Societies Act, 1935, the Court finds that if what has been alleged and in terms of the materials and pleadings on record, the action taken being arbitrary, this Court may entertain the application without relegating the petitioners to the alternative forum.

6. Learned counsel for the respondent no. 8 submitted that the petitioners have committed gross irregularity of recommending such persons for becoming members, who have given affidavit that they had either not applied for membership or were already members of the society.

7. At this juncture, on a direct query of the Court as to why such facts were not mentioned in the show cause to the petitioners which, in law, was required to be done as without specific charges being framed nobody can be called upon or held responsible for not replying to something which is not part of the charge or details of which is not known to him, learned counsel for the respondent no. 8 was not in a position to controvert the fact that no details or instance of any alleged wrong was even indicated in the show cause and the show cause only speaks in general and



vague terms that wrong persons had been recommended for being made members and the conduct was against the norms of the PACS.

8. Having regard to the aforesaid and on the basis of the admitted position, the Court finds that a case for interference has been made out.

9. It has rightly been submitted by learned counsel for the petitioners, that based on the show cause, which is totally vague and non-speaking, no action can be taken against any person, much less of visiting him with termination of his membership from the PACS. The Court would even go to the extent of holding that the so called show cause is no show cause in the eyes of law in the background of the discussions made above. It need not be overemphasized that a show cause is meant to inform the person, who is required to reply, with regard to specific charges and instances, which are against him and for which the person charged is responsible so that he has a fair and reasonable opportunity to meet such charges, which is the basic requirement of law, which has to be adhered to under all circumstances. In the present case, the issue being guided by the statutory provisions, learned counsel for the respondent no. 8 has not been able to show to the Court that even under the bye-laws, requirement/procedure



for removal of the petitioners from the primary membership of the PACS has been followed.

10. For reasons aforesaid, the application is allowed. The removal of the petitioners from primary membership of the PACS in question, stand set aside. Accordingly, the membership of the petitioners of the concerned PACS stand restored.

11. However, it shall be open to the competent authority of the PACS to take action against the petitioners, in accordance with law, after following the due procedure and complying with the principles of natural justice, by giving opportunity of hearing to them.

(Ahsanuddin Amanullah, J)

J. Alam/-

AFR/NAFR	AFR
U	

