

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3166 of 2014

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1. Prema Devi @ Prabha Devi Wife of Late Ganga Pd. Singh Resident of Village - Chatra Tola, P.S. - Rupauli, P.O. - Rupauli, Distt - Purnea
 2. Rupauli Prakhand Matsyajivi Sahyog Samiti Ltd. Rupauli through it's the then Secretary Prema Devi @ Prabha Devi Wife of Late Ganga Pd. Singh Resident of Village - Chatra Tola, P.S. - Rupauli, P.O. - Rupauli, Distt - Purnea

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Co-Operative Department, Bihar, Patna
2. The Joint Registrar Co-Operative Societies, Purnea Division, Purnea
3. The District Co-Operative Officer, Purnea
4. The Block Development Officer-Cum-Election Officer of Rupauli Prakhand Matsyajivi Sahyog Samiti Ltd, Rupauli
5. Indra Deo Sah Son of Madan Sah Resident of Village and P.O. Chapahari, P.S. - Rupauli, Distt - Purnea
6. Smt. Veena Devi Wife of Shyam Sunder Mandal Resident of Village - Dumari, P.O. - Nandgola, P.S. - Tekapatti, Distt - Purnea, the then President Rupauli Prakhand Matsyajivi Sahyog Samiti Ltd. Rupauli
7. Anil Mandal Son of Karu Mandal Resident of Village - Bairiya, P.S. - Tekapatti, P.O. - Mehendi, Distt - Purnea
8. Md. Irfan Son of Md. Nasir Resident of Village and P.O. - Chapahari, P.S. - Rupauli, Distt - Purnea
9. Kashi Nath Singh Son of Ajab Lal Sahni Resident of Village - Gidha Sahni Tola, P.S. - Rupauli, Distt - Purnea
10. Gholtu Mandal Son of Anil Mandal Resident of Village and P.O. - Chapahari, P.S. - Rupauli, Distt - Purnea
11. Dilip Pd. Singh Son of Dashrath Pd. Singh Resident of Village - Chatra Tola, P.S. and P.O. - Rupauli, Distt - Purnea
12. Narsingh Mahto Son of Uagri Mahto Resident of Village and P.O. - Goriyar, P.S. - Tekapatti, Distt - Purnea
13. Bilash Sharma Son of Baiju Sharma Resident of Village and P.O. - Srimata, P.S. - Tekapatti, Distt - Purnea
14. Santosh Kumar Yadav Son of Shobhakant Yadav Resident of Village - Dhusar, P.S. - Tekapatti, Distt - Purnea
15. Gyan Chandra Singh Son of Kesho Singh Resident of Village - Sapaha, P.S. - Tekapatti, P.O. - Nandgola, Distt - Purnea
16. Sunil Kumar Son of Prithvi Mandal Resident of Village and P.O. - Mohanpur, P.S. - Rupauli, Distt - Purnea
17. Santosh Kumar Yadav Son of Shobha Kant Yadav Resident of Village and P.O. - Ghusar, P.S. - Rupauli, Distt - Purnea

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 192 of 2014

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1. Santosh Kumar Yadav S/O Shobha Kant Yadav R/O Vill. + P.O.- Ghusar, P.S.-
Rupauli, Dist.- Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. The Joint Secretary, Co-Operative Societies, Purnea, Division- Purnea
3. The District Co-Operative Officer, Purnea
4. The Election Officer of Rupauli Prakhand Matasyajivi Sahyog Samiti Ltd.
Rupauli Cum Block Development Officer, Rupauli
5. Indra Seo Sah S/O Madan Sah R/O Vill. + P.O.- Chapahri, P.S.- Rupauli, Dist.-
Purnea
6. Rupauli Prakhand Matasyajivi Sahyog Samiti Ltd., Rupauli through it's the then
Secretary Prema Devi @ Prava Devi W/O Late Ganga Prasad Singh R/O Vill.-
Gwalpara Chatra Tolla, P.O. + P.S.- Rupauli, Dist.- Purnea
7. Veena Devi W/O Shyam Sundar Mandal R/O Vill.- Dumari, P.O.- Nand Gola,
P.S.- Rupauli, Dist.- Purnea then the Chairman
8. Anil Mandal S/O Karu Mandal R/O Vill.- Bairiya, P.O.- Mehdi, P.S.- Rupauli,
Dist.- Purnea. Member of Managing Committee of the Society
9. Kashi Nath Singh S/O Ajab Lal Singh R/O Vill.- Gidha, P.O.- Aajo Kuppa, P.S.-
Rupauli, Dist.- Purnea. Member of Managing Committee of the Society
10. Dilip Prasad Singh S/O Dashrath Prasad Singh R/O Vill.- Chatara Tolla, P.O. +
P.S.- Rupauli, Dist.- Purnea. Member of Managing Committee Of The Society
11. Md. Irfan S/O Nasir R/O Vill. + P.O.- Chapahri, P.S.- Rupauli, Dist.- Purnea.
Member of Managing Committee of the Society
12. Gholtu Mandal S/O Anil Mandal R/O Vill. + P.O.- Chapahri, P.S.- Rupauli,
Dist.- Purnea. Member of Managing Committee of the Society
13. Narsingh Mahto S/O Ugari Mahto R/O Vill. + P.O.- Chapahri, P.S.- Rupauli,
Dist.- Purnea. Member of Managing Committee of the Society
14. Vilas Sharma S/O Baiju Sharma R/O Vill.- Sirbhatta, P.O.- Mehdi, P.S.-
Rupauli, Dist.- Purnea. Member of Managing Committee of the Society
15. Gyan Chand Singh S/O Kesho Singh R/O Vill.- Sapaha, P.O.- Nand Gola, P.S.-
Rupauli, Dist.- Purnea. Member of Managing Committee of the Society
16. Sunil Kumar S/O Pirthavi Mandal R/O Vill. + P.O.- Mohanpur, P.S.- Rupauli,
Dist.- Purnea. Member of Managing Committee of the Society.

.... Respondent/s

Appearance :

(In CWJC No. 3166 of 2014)

For the Petitioner/s : Ms. Mahasweta Chatterjee, Adv.

For the Respondent/s : Smt. N. Nirvikar, G.A. 10

For the private respondent No.5: Mr. Shanker Thakur, Adv.

(In CWJC No. 192 of 2014)

For the Petitioner/s : Mr. Deepak Kumar, Adv.

For the Respondent/s : Mr. Santosh Kumar Jha, Adv.

For the private respondent No.5: Mr. Shanker Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date: 09-12-2015

Heard Ms. Mahashweta Chatterjee learned counsel for the petitioner, in C.W.J.C.No.3166 of 2014, Mr. Dipak Kumar learned counsel for the petitioner in C.W.J.C.No.192 of 2014, learned counsel for the State in the two writ petitions and Mr. Shankar Thakur learned counsel for the respondent No.5 in response to the writ petition.

Though the other private respondents have been served but except the respondent No.14 in C.W.J.C.No.3166 of 2014, who is the writ petitioner in the second writ petition, the others have not been chosen to appear.

Since the issues are common in the two writ petitions hence I will be referring to the pleadings and annexures as found in C.W.J.C.No.3166 of 2014 unless clarified with specific reference to the other writ petition.

With the consent of the parties, the two writ petitions have been heard with the view to final disposal at the present stage itself.

The petitioners are aggrieved by the order dated 30.11.2013/10.12.2013 passed by the Joint Registrar, Cooperative Societies, Purnea in Election Dispute Case No. 3 of 2012 whereby he has set aside the entire election held for constituting the Managing Committee of the Rupauli Prakhand Matsyajivi Sahayog Samiti Ltd. Rupauli in the district of Purnea. The petitioner while questioning the



order of the prescribed authority has also challenged the order dated 2.1.2014 of the Joint registrar in appointing the Administrator for the society as a consequence to the order passed in the election dispute. By passage of time, the administrator has been replaced by an adhoc committee and which information has been placed on record by the petitioner in the supplementary affidavit filed in the proceeding.

Facts of the case briefly stated is that respondent No.5 and the petitioner No.1 along with some others contested the post of Secretary to the society. During the course of scrutiny the nomination of the respondent No.5 was rejected inter alia on grounds that no dues certificate was not free from suspicion as it contained overwriting. Some others who also had filed their nomination to the post, chose to withdraw from the contest leaving the petitioner No.1 alone as the contestant for the post. Following the procedure provided under Rule 21P of the Bihar Cooperative Societies Rules (hereinafter referred to as 'the Rules') framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') the petitioner No.1 was declared elected unopposed to the post of Secretary. Respondent No.6 was elected the Chairman and respondent Nos.7 to 17 are the returned members of the Managing Committee. As I have observed these respondents have not chosen to appear and contest the position except the election petitioner who is represented by Mr. Thakur.



Ms. Chatterjee learned counsel for the petitioner has questioned the order of the Joint Registrar on merits as well as on maintainability of the election petition. It has been argued that since the 'No Dues Certificate' presented by the election petitioner contained overwriting hence it was rightly rejected during the course of scrutiny by the Returning Officer and which rejection suffered from no infirmity. Ms. Chatterjee however, could not explain as to why the petitioner did not choose to appear before the prescribed authority to contest the election case. The argument of Ms. Chatterjee has been contested by Mr. Thakur to argue that since the overwriting was also accompanied with the signature of the Branch Manager as well as seal of the Bank hence there was no occasion for the Returning Officer to reject the same. He submits that the rejection of the nomination of the election petitioner the respondent No.5 herein was wholly incorrect and he has been wrongfully denied the contest. It was argued that in the circumstances where the action of the Returning Officer was itself clouded with the arbitrariness, the election of the returned office bearers and members cannot be upheld.

On the issue of maintainability it was argued by Mr. Thakur that even if no prayer for reelection was made by the election petitioner but the moment the rejection of nomination of the election petitioner is upheld that by itself would lead to an order of reelection

which would become only a consequence.

Ms. Chatterjee has argued on maintainability of the election petition to submit that even when the election petitioner has questioned the rejection of nomination to the post of Secretary of the society, he has illegally questioned the constitution of the entire Managing Committee and made a prayer to declare the election of the Managing Committee as a whole as void which is unsustainable in law. According to Ms. Chatterjee, the foundational facts to question the election of others are clearly missing and in which circumstance there could be no reason for interference with the election of the other returned candidates.

I have heard learned counsel for the parties and I have perused the materials on record.

The reason for rejection of the nomination of the petitioner is present at Annexure- 6 which is a letter of the Election Officer-cum-Block Development Officer addressed to the Prescribed Authority submitted during the course of hearing of the election dispute and in which the sole ground taken by the Returning Officer is the overwriting present on the no dues certificate. The reasons so assigned by the Returning Officer was not upheld by the Prescribed Authority while passing the impugned order. In my opinion also a mere overwriting on the certificate could not have been a reason for



rejection of nomination until such that time it was confirmed beyond doubt that the document is either forged or fabricated. There is nothing present in the letter of the Election Officer impugned at Annexure-6 to the writ petition which discloses any other material for rejection except overwriting. As I have held, a mere overwriting can not be a ground for rejection of nomination and to that extent the complaint of the election petitioner is upheld but then whether a mere upholding of the complaint would serve any purpose for the petitioner. The answer is in the negative for in absence of any consequential prayer made by the petitioner in his election petition seeking a reelection to the post of Secretary after acceptance of his nomination, the election petition becomes academic.

I have already mentioned above that as a consequence of rejection of nomination of the election petitioner and by virtue of withdrawal of candidature by the other contestant, it was the petitioner No.1 alone who remained in contest and in view of the provisions underlying Rule 21P, the petitioner No.1 was declared unopposed. There is thus no infirmity in the election of the petitioner No.1. In so far as the election of the Chairman and the members of the Managing Committee is concerned, although the election petitioner has prayed to set aside their election as well but the foundational facts for such declaration are apparently missing. In absence of any infirmity being

pointed out by the petitioner to seek such a declaration, the prayer was unacceptable and incapable of being upheld.

The copy of the election petition has been enclosed by the writ petitioner at Annexure-5 and paragraph 9 discusses the relief prayed which simply prays to declare the constitution of the Managing Committee void and the election of the office bearers and the members to be set aside. The grounds set up for such relief is improper rejection of the nomination of the petitioner to the post of Secretary. Despite repetition, I would mention here that neither the petitioner has prayed for acceptance of his nomination nor there is a prayer for reelection to the post of Secretary rather the only prayer made by the petitioner is to set aside the election of the entire Managing Committee including its office bearers. In my considered opinion, the prayer made by the petitioner in his election petition is fit to be rejected on the sole ground that there is no infirmity pointed out in the election of the office bearers/members of the Managing Committee. The law is well settled and unless a relief is prayed in an election petition it can neither be implied nor can be granted as a consequence. In fact, there is neither any infirmity in the election of the Secretary i.e. the petitioner No.1 who was declared unopposed nor there is any infirmity pointed out in the election of the Chairman or the members of the Committee which requires any interference. Even



if the petitioner had made out a case of improper rejection he had to first make a prayer for acceptance thereof followed by a prayer for reelection against the post of Secretary which I have stated, is missing in the election petition. The lapses are fatal and can only lead to rejection of the consequential relief to the petitioner. A last minute effort was made by Mr. Thakur to salvage the situation by reminding this Court of the extraordinary jurisdiction vested under Article 226 of the Constitution of India but even this attempt cannot draw any advantage for the petitioner for the exercise of jurisdiction on an election dispute is entirely distinct and it is the reasons assigned in the order impugned which falls for judicial review in the backdrop of the relief prayed.

In the circumstances so discussed and in absence of any prayer made by the petitioner to seek a re-election against the post of Secretary of the society after acceptance of his nomination papers, the prayer so made for declaration of the election to the Managing Committee of the society void, can not have been upheld for it suffers from no infirmity.

In result, the order dated 30.11.2013/10.12.2013 passed by the Joint Registrar, Cooperative Societies Purnea is set aside. The writ petition is allowed. The election of the office bearers and the members to constitute the Managing Committee of Rupauli Prakhanda

Matsyajivi Sahayog Samiti Ltd. Rupauli is restored to its position.
Since the appointment of the Registrar as well as the Adhoc Committee was only as consequence of the order passed in the election dispute hence the consequences shall follow.

The two writ petitions are allowed.

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(Jyoti Saran, J)