

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4219 of 2015

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Nand Lal Kumar S/o Late Ramashish Singh, R/o Village- Pura, P.S. -
Wazirganj, Dist- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department of Bihar.
2. The Bihar State Election Authority, 32, Harding Road, Patna through the Chief Election Officer.
3. The Joint Registrar Co-operative Societies, Magadh Division, Gaya.
4. The Election Officer (Co-operative Societies)-cum-the Block Development Officer, Wazirganj, District- Gaya.
5. Ram Lakhan Singh S/o Late Raghunandan Singh, resident of Village- Manaini, P.S.- Wazirganj, Gaya.
6. Subodh Kumar S/o Late Kedar Singh, resident of Village- Pura, P.S. Wazirganj, District- Gaya.
7. Pura Primary Agriculture Credit Co-operative Society Ltd. (Pura PACS), at Pura, P.S.- Wazirganj District- Gaya, through the paid manager.
8. The Registrar Co-operative Societies, Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rakesh Kumar Jha, Advocate
For the Respondent/s : Mr. Arvind Kumar No. 1, SC-13
For the Respondent No. 5: Mr. Rajendra Narain, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 20-07-2015

The petitioner by this writ petition filed under Article 226 of the Constitution of India has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 31.1.2015 / 14.2.2015 (incorrectly mentioned as 31.1.2015 /14.1.2015) passed by the Joint Registrar, Co-operative Societies, Magadh Division, the respondent no. 3 herein in Election Dispute No. 10 of 2014-15 as circulated vide Memo No. 274 dated 16.2.2014 impugned at Annexure-3 to the writ

petition, whereby the election of the petitioner has been set aside and the election petitioner i.e. respondent no. 5 has been declared elected.

The facts are not in dispute rather are admitted. The petitioner and the respondent no. 5 contested the election to the post of Chairman, Pura Primary Agriculture Credit Co-operative Society (hereinafter referred to as 'the Co-operative Society') which took place on 01.11.2014. The results were declared on 02.11.2014 and in the contest the petitioner defeated the respondent no. 5 by a margin of 15 votes. The respondent no. 5 raised an election dispute before the Joint Registrar, Co-operative Society bearing Election Dispute No. 10 of 2014-15 and the Joint Secretary by the impugned judgment and order dated 31.1.2015 / 14.2.2015 while declaring the election of the petitioner as illegal has further proceeded to declare the respondent no. 5 elected and being aggrieved the petitioner is before this Court.

The election of the petitioner has been set aside on grounds of suppression of material fact by the petitioner in respect of divulging the details relatable to his involvement in a criminal case arising from Harijan P.S. Case No. 23 of 2000 / Trial No. 13 of 2013 and in which cognizance has been taken under Section 147, 342, 323 and 504 of the Indian Penal Code against the petitioner. It was the complaint of the private respondent no. 5 that the petitioner has suppressed the fact regarding the criminal case instituted against him as well as the



incarceration suffered thereunder while filing his affidavit alongwith the nomination form and in this manner had violated the Act, Rules and the guidelines issued by the election commission and hence the nomination paper was liable for rejection and his election was fit to be set aside. These facts of non disclosure of the criminal case in question are admitted and not in dispute rather the petitioner himself has enclosed the copy of the nomination form as well as affidavit at Annexure-5 and does not dispute the position. The contention of the petitioner is that the non-disclosure of the involvement of the petitioner in a criminal case instituted for offences not relatable to a transaction of a Co-operative Society was not required to be disclosed nor can lead to rejection of nomination. The Joint Registrar has rejected the contentions advanced on behalf of the writ petitioner relying upon the Supreme Court judgment rendered in the case of the **Union of India vs. Association for Democratic Reforms** reported in **(2002) 5 SCC 294** and has held the petitioner guilty of suppression of material fact and held him disqualified to contest the election and while doing so has declared the respondent no. 5 elected.

Mr. Rakesh Kumar Jha has appeared for the petitioner while the State is represented by the State counsel and the election petitioner i.e. the respondent no. 5 is represented by Mr. Rajendra Narain, learned senior counsel. Mr. Jha, learned counsel for the petitioner has

referred to the election petition filed by the respondent no. 5, a copy of which is placed at Annexure-1 to submit that even when no relief has been sought by the election petitioner for declaration of the result in his favour yet the Joint Registrar has in a cavalier manner declared him elected. He submits that the impugned order is unsustainable on more than one ground.

With reference to the provisions underlying Section 13 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as 'the Election Authority Act') he submits that unless the election petitioner in addition to questioning the election of a returned candidate has also prayed for a declaration of the result in his favour, no such relief can be granted to him and in support of his submission learned counsel has relied upon a Bench decision of this Court reported in **2012 (1) PLJR 368 (Ashutosh Kumar vs. State of Bihar)**.

Learned counsel with reference to the Section 10(2) of the Act submits that the election petition suffers from the vice of non-joinder of parties inasmuch as although in terms of the relief prayed by the petitioner in his election petition, he is mandated under Section 10(2) (a) of the Act to arraign all the returned candidates but a bare perusal of the memo of parties to the election petition would show that except the petitioner and one Subodh Kumar, the election

petitioner did not arraign the other returned candidates and on this ground also, the election petition was fit to be rejected.

Proceeding further to defend the election of the writ petitioner he submits that there was no suppression by the petitioner in filing the affidavit enclosed with the nomination form and even if the petitioner has not disclosed his involvement in the criminal case arising from Harijan P.S. Case No. 23 of 2000 / Trial No. 13 of 2013 but in view of the clear stipulations provided under Section 44BE of the Cooperative Societies Act, 1935 (hereinafter to as 'the Act') and Rule 23(1) (f) of the Rules framed thereunder it is only where the petitioner would have been in default to any registered society in respect of any loan taken by him or any criminal proceeding relating to any transaction of registered society was pending against him in which cognizance had been taken, he was not required to give the details of his accusation in a criminal case arising under the general provisions of the Indian Penal Code. Learned counsel submitted that since the petitioner was not disqualified to contest any election in terms of Section 44BE read with Rule 23(1) (f) of the Rules, his election could at best be questioned for violation of Section 12(1)(d) (iv) of the 'Election Authority Act' regarding non-compliance with the provisions of 'the Act' and the rules and orders issued thereunder. He submits that the instructions issued by the Election Authority are



present at Annexure-4 of the writ petition on the issue of nomination form and the requirement is directly relatable to the issues falling under Sections 44BE of 'the Act' and not regarding involvement of the petitioner under a general law. Mr. Jha in support of his submissions referred to a Bench decision of this Court reported in **2015(1) PLJR 438 (Lal Das Rai vs. Sri Hulas Pandey & ors.)** and with particular reference to paragraph-61 and 62 thereof he submits that a mere furnishing of wrong information or suppressing material information in the affidavit has been held not to be sufficient enough for rejection of nomination. With reference to another judgment of this Court rendered in the case of **Ghanshyam Lal Jamuar vs. Shatrughan Sinha** reported in **2013(2) PLJR 358** he submits that identical conclusion has been drawn in paragraph-41 of the judgment.

Concluding the arguments it was submitted by Mr. Jha that since the provisions of Section 44BE of 'the Act' and Rule 23 (1) (f) of 'the Rules' framed thereunder does not disqualify a person from contesting co-operative election unless he comes within the parameters drawn thereunder and since admittedly the petitioner is not accused for any offence mentioned in the afore referred provision, the non-disclosure of the criminal case registered in the Harijan Police Station cannot be a foundation for declaring his election void.

The arguments of Mr. Jha has been vehemently contested by

Mr. Rajendra Narain, learned senior counsel and even while admitting to the procedural lapse by the election petitioner in articulating his relief as well as the irreversible defect in the memo of parties, it is submitted that in view of the admitted circumstances regarding the involvement of the petitioner in Harijan P.S. Case No. 23 of 2000 / Trial No. 13 of 2013, there is no escape for the petitioner and to that extent the conclusion of the Joint Registrar cannot be faulted. Referring to the judgment of the Supreme Court in the case of **Assn. Democratic Reforms** (supra) which was the foundation for incorporating several amendments in the Representation of Peoples Act, 1951 he submits that any interference with the impugned judgment would be obstructing the electoral reforms so advocated by the Supreme Court in the judgment. Learned counsel, however, even while canvassing as such could not distinguish the judgments of this Court relied upon by the counsel for the petitioner rendered in the case of **Lal Das Rai** and **Ghanshyam Lal Jamuar** (supra).

Learned counsel for the State also advocated the principles underlying maintaining purity in election and to submit that in the admitted circumstances, the petitioner is not entitled to any relief.

I have heard learned counsel for the parties and I have perused the records. As I have observed at the very outset the facts are admitted and it is not in dispute that the petitioner did not disclose

his involvement in Harijan P.S. Case No. 13 of 2000 / Trial No. 23 of 2013 in the affidavit filed alongwith the nomination form rather in response to the query present at Item 1 & 2 of the Annexure to “प्रपत्र-क”, a copy of which is enclosed with Annexure-5 regarding cognizance being taken in any criminal case, he has responded as “शून्य”. The issue would be whether this response by the petitioner is sufficient to declare his election void.

Insofar as the relief prayed by the election petitioner is concerned, it is manifest from Annexure-1 that the election petitioner even while questioning the election of the writ petitioner had not sought any declaration in his favour. Thus in view of the clear stipulation in Section 13(1) of the ‘Election Authority Act’ in absence of any such declaration prayed by the election petitioner, the prescribed authority could not have granted this relief to the election petitioner. Clearly the prescribed authority has exceeded his jurisdiction in granting such relief to the election petitioner which has not even been prayed by him in the election petition. The declaration thus in favour of the election petitioner is wholly illegal and unsustainable and the contention of the petitioner counsel on the issue is upheld.

The next issue raised by Mr. Jha was regarding the



maintainability of the election petition in view of the stipulations of Section 10(2) (a) of the 'Election Authority Act' which mandates that where an election of all or any returned candidate is questioned and no declaration is claimed by the election petitioner in his favour then all the returned candidates have to be made a party to the petition. Insofar as the present case is concerned, since the election petitioner had not prayed for declaration in his favour, hence he was mandatorily required to arraign all the returned candidates as party to the election case which has admittedly not been done. The election petition thus itself was not maintainable.

Although in view of my conclusion as to the maintainability of the election petition itself, there would be no occasion for me to delve into the eligibility of the writ petitioner to contest the election and whether the enclosure to the nomination form was suffering from the vice of suppression of material facts and was sufficient enough to declare his election void but considering that the parties have seriously contested on the issue, I am persuaded to record my opinion on this issue as well.

There is no dispute that the cognizance order passed against the petitioner in a matter arising under Sections 147, 342, 323, 386 and 504 of the Indian Penal Code in Harijan P.S. Case No. 23 of 2000 / Trial No. 13 of 2013 *ipso facto* does not disentitle or disqualify the

petitioner from contesting a Co-operative election. In fact Section 44BE of 'the Act' in its sub-section (3) makes the position absolutely clear that until a person is found to be in default of a loan obtained from a society or any other registered society or has any proceeding for discharge relating to any registered society pending against him or has a criminal proceeding relating to any transaction of a registered society pending against him in which cognizance has been taken, he is not disqualified to contest any election. The same position is reiterated in Rule 23(1)(f) of the Rules framed under 'the Act'. Thus any criminal proceeding which is unconnected with the issues discussed hereinabove cannot be a ground for disqualifying any person to contest a Co-operative election. Section 12 of the 'Election Authority Act' provides for the ground for declaring election to be void and at best the case of the writ petitioner can be considered against the grounds set up in Clause-(a) or Clause-(d)(i) or (iv) of sub-section (1) of Section 12. Since admittedly the petitioner is not accused for any offence as enumerated under Section 44BE(3) of 'the Act', hence the case of the petitioner can neither fall under Section 12(1)(a) or Clause-d(i) of the 'Election Authority Act'. The issue would be whether the election of the petitioner is hit by Section 12(d)(iv) of the 'Election Authority Act' and the non-disclosure of the criminal case has materially affected his election.



As I have already discussed neither the Co-operative Societies Act nor the State Election Authority Act mandates that the intending candidate should declare his involvement in all criminal cases in addition to those mentioned under Section 44BE of 'the Act'. Even the guidelines issued by the State Election Authority on the issue of nomination, a copy of which is placed at Annexure-4 to the writ petition merely refers to the disqualifications specifically mentioned in Section 44BE of 'the act' and Rule 23(1) of the rules. In my opinion where neither the Co-operative Societies Act nor the Election Authority Act disqualifies any intending candidate from contesting a Co-operative election for offences other than those mentioned in Section 44BE of the Co-operative Societies Act, a non-disclosure of any criminal proceeding unconnected with the offences mentioned in Section 44BE of 'the Act' even if treated to be a lapse on the part of the candidate but since even its disclosure would not disentitle him to contest the election, it cannot be held that his election stood materially affected by its non-disclosure. The judgment rendered by this Court in the case of **Lal Das Rai** (supra) was in even more stringent circumstances where the Representation of Peoples Act, 1951 under Section 33A mandated the candidate to disclose his involvement in all criminal proceedings initiated for offences punishable for imprisonment for two years or more. There is no such

requirement either under the Co-operative Societies Act or the State Election Authority Act. The Bench considering similar accusations in the backdrop of the statutory provisions underlying Section 33A, 33B, Section 36(2), Section 100(1)(d) and Section 125A of the Representation of Peoples Act and after considering a catena of judgments rendered by the Supreme Court including the one rendered in the case of Association for Democratic Reforms (supra) has held in paragraph-62 as follows:

“xxx xxx xxx xxxx xxxx
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 Thus as the law stands after all these developments, non furnishing of affidavit in Form-26, as prescribed by the Election Commission does amount to violation of the provisions of the 1951 Act and the rules and orders made under it. But furnishing of wrong information or suppressing material information in the form of affidavit does not make the nomination paper liable for rejection, which otherwise has been made punishable by the said newly inserted Section 125A in the 1951 Act by means of said amendment Act.”

Thus in view of the conclusive findings on the issue by the Bench in the case of Lal Das Rai (supra), the non-disclosure by the petitioner of the criminal case registered under the provisions of the

Indian Penal Code arising from Harijan P.S. Case No. 13 of 2003 / Trial No. 23 of 2013 could not have been a ground for declaring his election void and even otherwise where the offences leveled against the petitioner do not come within the purview of Section 44BE of 'the act' read with Rule 23 (1)(f), his election could not have been interfered with. The election petition so preferred by the respondent no. 5 was not fit for indulgence either on maintainability or on merits and the prescribed authority under the Election Authority Act has clearly faltered in holding the election of the writ petitioner as void.

For the reasons aforementioned, the judgment and order dated 31.1.2015 / 14.2.2015 passed by the Joint Registrar, Co-operative Societies, Magadh Division in Election Dispute No. 10 of 2014-15 cannot be upheld and is accordingly set aside.

The writ petition is allowed. The election of the petitioner is upheld.

(Jyoti Saran, J)

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