

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7135 of 2014

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1. Sushila Prasad W/o late Baleshwar Prasad, resident of House No. 16, Ashiana Main Road, P.S. Rajeev Nagar, Distt. Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Joint Registrar, Cooperative Societies, Patna Division, Patna
3. The Deputy Registrar, Cooperative Societies, Patna Division, Patna
4. The Sub Divisional Magistrate-cum-Election officer, Patna Sadar
5. Jyotipuram Sahkari Grih Nirman Samiti Ltd., through its Secretary
6. The Bihar State Election Authority, Barrack No. 11, Old Secretariat, Patna
7. Subhas Prasad Yadav, S/o Shri Shiv Prasad Yadav, resident of Sadar Bazar, Gopalganj, so called President, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
8. Dr. Ashok Kumar Singh, S/o Shri Dinanath Singh, Resident of Rukuanpura, Patna, so called Secretary, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
9. Indradev Paswan, S/o Jagdip Paswan, resident of village and Post anaut, Nalanda, so called Director (ST), Jyotipuram Sahkari Grih Nirman Samiti Ltd.
10. Kedar Paswan, S/o Baleswer Paswan, resident of village and post Mudhari, so-called Director (ST), Jyotipuram Sahkari Grih Nirman Samiti Ltd.
11. Dr. Krishnandan Prasad, S/o Somari Prasad, resident of Sail Sadan, Gardanibagh Road No.4A, so called Director, Backward Category, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
12. Ram Nandan Prasad Singh, S/o Durga Singh, resident of Balwapar, Harnaut, Nalanda, so-called Deputy Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
13. Mahesh Kumar, S/o late Ramdhin Singh, resident of Ram Sangh Dihara, Nalanda, so-called Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
14. Ajay Kumar, S/o late Parmanand Singh, resident of Chandmari Road, Patna, so-called Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
15. Premnath Sajjan, S/o Bainath Singh, resident of Khajpura, Patna, so-called Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
16. Harendra Prasad Singh, S/o Ramdarsh Singh, resident of Mainpura, Patna so-called Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
17. Sunil Kumar Nirala, S/o Interlal Thakur, resident of Narayan Bhawan Behind R.D. Tower, New Punaichak, Patna, so-called Director, Jyotipuram Sahkari Grih Nirman Samiti Ltd.
18. Usha Devi, W/o Raj Kishore, Path Chhoti Machua Toli, Danapur Cantt., so-called Director (Female), Jyotipuram Sahkari Grih Nirman Samiti Ltd.
19. Mithila Verma, W/o Vinay Kumar Verma, resident of Sudhir Subal Sadan, Nasirganj, Patna, So-called Director (Female), Jyotipuram Sahkari Grih Nirman Samiti Ltd.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-09-2015

Heard Mr. Yogendra Mishra, learned counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the order dated 28.12.013 passed by the Deputy Registrar, Cooperative Societies, Patna Division, Patna in Misc. Case No.9 of 2013 whereby the election case has been dismissed on grounds of lack of evidence and absence of locus of the petitioner to prefer such election dispute.

Mr. Mishra has appeared to advance the case of the petitioner to submit that whereas in view of the provisions of Section 10 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as 'the Act') an election dispute can be raised either by a candidate or an electorate and in so far as the issue of lack of evidence to confirm the invalid voters' list is concerned, the same is manifest from the voters' list present at Annexure-2 which apparently consists of such persons who are resident of the district of Nalanda and not the operative district of the society which has its headquarter at Patna. He submits that although the petitioner was not a candidate in the election but she did file her objection against the voters' list and since in the meanwhile the election had been notified and the objection had not been disposed of that she moved this Court in C.W.J.C.No.22491 of 2012 and a bench of this Court without interfering with the election so

notified disposed of the writ petition by allowing the petitioner to question the election on grounds so taken in accordance with law. It is pursuant to the liberty so granted by this Court that the election dispute in question has been preferred and has been rejected and the petitioner being aggrieved is before this Court.

As I have observed, hereinabove, the election case has been rejected on twin grounds namely;

- (a) absence of locus; and
- (b) absence of evidence to support the claim.

Mr. Mishra learned counsel appearing on behalf of the petitioner while supporting the claim of the petitioner to raise an election dispute even if she is not a candidate has simply referred to Section 10 of 'the Act' and to submit that it can be a candidate or the electorate who can prefer such dispute.

Considering the provisions of Section 10 of the 'the Act' in the backdrop of the provisions of Section 81 of the Representation of the People Act, 1951, I find no bar for an elector to challenge the election on any of the grounds so available under Section 12 of 'the Act' and to that extent I agree with the contentions of Mr. Mishra that the petitioner could not have been non-suited on grounds of absence of locus.

This would bring to this Court second issue raised regarding

illegal voter list. According to Mr. Mishra the evidence that the voter list was infracted was on record and even the objections had been raised but not decided by the election officer which had infracted the elections so as fit to be declared void under Section 12(1)(d)(iv) of 'the Act' inasmuch as it is founded on an irregular voters' list.

Mr. Mishra in support of his arguments has relied upon a judgment of the Supreme Court reported in **A.I.R. 1980 SC 1612 (Bar Council of Delhi And Others Versus Surjeet Singh and Others)**

I have heard learned counsel for the parties and I have perused the records.

The petitioner did not contest the election yet seeks a declaration to hold the election void on grounds of irregularity in the voter list which as per the petitioner, has not been prepared in violation of the legal provisions. The petitioner may be right and may be some infirmities have crept into the voter list but then the issue for consideration is whether an election is to be declared void on mere grounds of infirmities in the voter list. The law is well settled on the issue and irregular voter list simplicitor cannot be a ground for such declaration. The order impugned reflects that even when the petitioner was making complaint regarding dead persons voting and that voters were residents of different districts, yet there is no evidence to



confirm the position that such persons had voted. In fact except for the entry in the voters' list the petitioner has no other evidence. Even to support the voter list contained dead persons, all that the petitioner could produce is four death certificates of whom only three were electorate. The question would be even if these irregularities complained of is accepted on its face value, whether it is sufficient for declaring the election void. Mr. Mishra has canvassed the case of the petitioners on the anvil of the statutory provision underlying Section 12(1)(d)(iv) of 'the Act' which is parimateria to Section 100(1)(d)(iv) of the Representation of the People Act and reads as follows:

“12 (1) Subject to the provisions of sub-section (2) if Prescribed Authority is of opinion—

- (a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance or any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the Prescribed Authority shall declare the election of the returned candidate to be void.

A plain reading of the statutory provisions would confirm that there is a twin duty cast upon a person to question an election on grounds of non compliance of the provisions of 'the Act' or any rules and which is that he has not only to prove that the rules and provisions have been violated rather he has also to demonstrate that such statutory violation has resulted in the success of the returned candidate.

This very issue came up for consideration in the case of **Shyamdeo Prasad Singh Versus Nawal Kishore Yadav** since reported in **(2000) 8 SCC 46** and a bench of three Judges of the Supreme Court taking note of the judgments on the issue as to whether an election can be declared void on grounds of infirmity in the electoral roll has concluded as follows:

“26. To sum up we are of the opinion that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls, though they were not qualified to be so enrolled, cannot be a ground for setting aside an election of a returned candidate under sub-clause (iii) or (iv) of clause (d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951. A person enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-sections (2) to (5) of Section 62 of the Representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did

not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950.”

In fact the view expressed by the Supreme Court continues to govern the field right since after the judgment in the case of **Kunwar Nripendra Bahadur Singh Versus Jai Ram Verma** reported in **AIR 1977 SC 1992** and has been cited on the approval in the subsequent judgment reported in **(2010)4 SCC 81(Laxmi Kant Bajpai Vs. Haji Yaqoob & Ors.)**.

There is absolute lack of pleadings to support that the voters who had been illegally included in the list had contributed to the success of the returned candidate and which had materially affected the election nor is there any thing on record to show whether any such prayer had been made by the petitioner in conformity with the statutory provisions. In fact even in absence of such prayer the petitioner simply proceeded to seek a declaration that the entire election was void on such infirmity.

Another aspect which adversely effects the case of the petitioner is that even when the petitioner has chosen to question the right of persons on the issue of membership, none of them were added as a party to the case. In my opinion a dispute on a membership issue has taken a colour of an election dispute on the anvil of irregular voters' list with the members not even being added as a party.

For the reasons aforementioned I am not persuaded to interfere with the conclusion so drawn by the prescribed authority and the writ petition is accordingly disposed of.

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(Jyoti Saran, J)

