

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10872 of 2015

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Shila Nath Singh, son of Late Ganga Nath Singh, resident of village-
Mohammdpur, P.S. Garkha, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Joint Registrar, Cooperative Societies, Saran Division, Chapra.
4. The District Magistrate-cum-District Election Officer (Cooperative Societies Election), Saran at Chapra, District- Saran at Chapra.
5. The District Cooperative Officer, Saran at Chapra, District- Saran at Chapra.
6. The Block Development Officer-cum-Returning Officer (Cooperative Societies Election), Garkha Block, District- Saran at Chapra.
7. Sri Paras Singh, son of Sri Pashupati Nath Singh, resident of village- Mohammadpur, P.O. and P.S. Garkha, District- Saran at Chapra.
8. Sri Sipahi Rai, son of Late Ganesh Rai, resident of village- Mohammadpur, P.O. and P.S. Garkha, District- Saran at Chapra.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Dhananjay Kumar Tiwary, Advocate

For the State : Mr. Ajay Bihari Sinha, SC-19
Mr. Neeraj Raj, AC to SC-19

For the respondent no. 7: Mr. Sanjeev Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 27-08-2015

Heard Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. Sanjeev Kumar Mishra, learned counsel appearing for the respondent no. 7 who was the election petitioner before the Joint Registrar, Co-operative Society in the election case. Though served but the respondent no. 8 who was the third contestant to the post of Chairman

has not chosen to appear.

The petitioner has prayed for a writ in the nature of certiorari for quashing the order dated 04.6.2015 passed by the Joint Registrar, Co-operative Societies, Saran Division, Chapra in Election Petition No. 15 of 2014 whereby the entire election held to constitute the Managing Committee of the Primary Agriculture Credit Co-operative Society, Mohammadpur (hereinafter referred to as 'the Society') in the district of Saran together with the election of the Chairman has been set aside and directions have been issued for fresh election.

Facts of the case briefly stated is that the petitioner along with respondent nos. 7 and 8 contested the election to the post of Chairman of 'the Society' in question. The election was held on 26.10.2014 and the counting was carried out on 27.10.2014 when the petitioner secured 518 valid votes, the respondent no. 7 obtained 517 votes and the third candidate i.e. the respondent no. 8 secured only 26 votes. The results were declared and certificate issued in favour of the petitioner. An objection was raised by the private respondent no. 7 seeking a recounting. An application to that effect is placed at Annexure-3 to the writ petition. Guidelines were sought for from the State Election Authority when directions were issued for recount and in the recount the respondent no. 7 secured 498 votes while the



petitioner secured 497 votes and the respondent no. 8 got 18 votes. Since the result had altered in the recount that again the matter went before the State Election Authority as to the declaration to be made when it was opined that the parties may move in an election dispute. Since in the recount the respondent no. 7 had secured higher vote that he filed the election dispute giving rise to Election Dispute Case No. 15 of 2014 praying for the following reliefs:

- (a) The certificate of election alleged have been issued on 27.10.2014 in favour of O.P. No. 3 be declared as null and void, non-operative and without jurisdiction.
- (b) A necessary direction to declaring the petitioner as duly elected Chairman.
- (c) An appropriate direction be issued to the O.P. No. 2 forthwith be passed.
- (d) Since the O.P. No. 3 had got less number of votes in election be restrained from functioning.
- (e) Alternatively inspection and recount of votes, if at all found necessary, the same may be allowed by calling for the marked electoral roll and the ballot papers counted in favour of the petitioner and O.P. No. 3 and 4 as well as the rejected ballot papers and declare the result to election afresh.

It is manifest that the respondent no. 7 while questioning the certificate of election issued in favour of the petitioner had sought a declaration in his favour and in the alternative prayed for a recount.



The election case was contested by the petitioner and the Joint Registrar, Co-operative Society vide the impugned order passed on 04.6.2015 while finding infirmity in the original count also opined that the recount was also against the statutory provisions and in this background declared the entire election held to constitute the Managing Committee of 'the Society' itself null and void. The petitioner being aggrieved is before this Court.

Although extensive arguments have been advanced by Mr. Manglam and Mr. Sanjeev Kumar Mishra appearing for the contesting parties but briefly summarized the issues raised by Mr. Manglam are as follows:

- (a) Except that the Joint Registrar was of the opinion that a reasonable time should have been allowed to the private respondent to make his prayer for recount if he had any objection to the original count, there is no other infirmity in the original count to declare the election itself void;
- (b) The order of the Joint Registrar is beyond the relief prayed in the election petition;
- (c) The Joint Registrar in commenting upon the maintenance of the ballot boxes has gone beyond the pleadings of the election petitioner to make out a third case;
- (d) The prayer made by the respondent no. 7 for a recount was vague as no grounds were raised for making such prayer as is manifest from a copy

thereof placed at Annexure-3 and thus no recount could have been conducted; and

- (e) Even when the Joint Registrar has gone beyond the pleadings and the relief prayed by the election petitioner it is not a fit case for remand in absence of any infirmity in the original count and in view of the fact that the application for recount is vague.

Learned counsel in support of his submissions that a prayer for recount has to be made upon valid grounds and cannot be vague as evident from the application placed at Annexure-3, has relied upon the following judgments of the Supreme Court and this Court:

- (a) AIR 1966 SC 773 (Jagdish Singh vs. Kartar Singh) paragraph-31 and 32
- (b) (1975) 4 SCC 393 (Chanda Singh vs. Choudhary Shiv Ram Verma & ors.)
- (c) 2007(4) PLJR 169 (Banwari Yadav vs. The State of Bihar & ors.)

The argument of Mr. Manglam has been vehemently contested by Mr. Sanjeev Kumar Mishra appearing for the private respondents to submit that even if the application filed by the respondent no. 7 did not support the prayer in so many words but the election petition present at Annexure-10 in its paragraph-6 and 7 discusses the reasons for a recount. Learned counsel even while commenting upon the opinion of the Joint Registrar in holding the



process of recount as invalid submits that in view of the guidelines so issued by the State Election Authority there was no infirmity in the process of recount and to that extent the order of the Joint Registrar is not sustainable. It is the contention of the learned counsel that since there was widespread bungling and the votes drawn in favour of the respondent no. 7 was illegally counted in favour of the petitioner that the recount was necessary and the process so carried out has given the correct result where the respondent no. 7 had secured a higher number of votes. Mr. Mishra even while canvassing the case so sanguinely for the respondent no. 7 could not justify the vagueness in the application present at Annexure-3 nor assigned reasons for not questioning the order of the Joint Registrar insofar as it holds the recount as contrary to the statutory provisions.

I have heard learned counsel for the parties and I have perused the records. I need not go in so many words to hold that the order passed by the Joint Registrar is unsustainable in law and the reason is plain and simple. The Joint Registrar while passing the impugned order dated 04.6.2015 has made out a third case not even pleaded nor prayed for by the election petitioner. The relief prayed by the election petitioner has been reproduced hereinabove and nowhere has the petitioner prayed for countermanding the election and thus on this sole ground the order becomes unsustainable and is accordingly



set aside. The issue next would be whether it is a case for remand of the matter for the guidelines issued by the State Election Authority does permit a recount and since as per the order impugned and as contested by Mr. Mishra the recount resulted in the victory of the respondent no. 7 whether in the fitment of the things the matter is appropriate for a remand to be disposed of in terms of the relief prayed in the election petition. In my opinion a remand also would not serve any purpose for two reasons: firstly that except for commenting upon the conduct of the Returning Officer in not giving sufficient opportunity to the respondent no. 7 to file his application for recount, there is nothing on the record of the order which would justify that there was any infirmity in the original count and although the Joint Registrar has proceeded to make comment as to the manner of maintenance of the ballot box, I am surprised that this issue was neither raised by the election petitioner nor his reliefs were based upon any irregularity in maintenance of the ballot box nor he led any evidence to that effect.

In the circumstances and in view of the law so laid down in the catena of judgments some of which have been relied upon by Mr. Manglam referred to above, the prayer of the respondent no. 7 for a recount on vague grounds, was not fit to be allowed. This Court in the uncontested position discussed does not think it fit to order for a

remand of the matter for a recount.

In result the order dated 04.6.2015 passed by the Joint Registrar, Co-operative Society, Saran Division, Chapra in Election Petition No. 15 of 2014 is set aside. Since the certificate is already issued in favour of the petitioner hence the consequences shall follow.

The writ petition is allowed.

(Jyoti Saran, J)

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