

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17981 of 2014

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Suray Kali Devi wife of Sri Ram Pravesh Sharma, resident of village- Dاتیانا,
P.S.- Bikram, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Bihar State Election Authority through its Secretary, 32, Harding Road, Patna- 800001
3. The Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna- 800001
4. The Under Secretary, Bihar State Election Authority 32, Harding Road, Patna- 800001
5. The District Magistrate-cum-District Election Officer (Co-operative Societies), Patna
6. The District Co-operative Officer, Patna
7. The Block Development Officer-cum-Returning Officer, Co-operative Societies, Bikram, Patna
8. Shashi Shekhar, son of Sri Madhewar Sharma, resident of village & P.O. Dاتیانا, P.S. Bikram, District-Patna
9. Dilip Kumar, son of late Ram Anuj Singh, resident of village & P.O. Dاتیانا, P.S. Bikram, District-Patna
10. The Patliputra Central Co-Operative Bank Ltd. Patna through its Managing Director.
11. The Branch Manager, Bikram Branch of the Patliputra Central Co-Operative Bank Limited, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19675 of 2014

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1. Shailendra Kumar son of Late Baij Nath Singh
2. Harendra Sharma@Harendra Kumar S/o Late Dev Nandan Singh Both residents of village and P.O-Dاتیانا,P.S-Bikram,District-Patna-801104

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-Operative department ,Government of Bihar Patna
2. The Registrar, Co-Operative Societies, Bihar, Patna.
3. The District Magistrate, Patna-cum-Election Officer of the District for PACCS Election.
4. The District Co-Operative Officer, Patna-cum-Election Officer, Dاتیانا PACCS
5. The Block Education Officer, Bikram Block ,District-Patna
6. Chief Election Officer, Election Commission, Bihar, Patna
7. Chairman, Dاتیانا PACS, Bikram Block, District-Patna

.... Respondent/s

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Appearance:**(In CWJC No. 17981 of 2014)**

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate with

Mr. Sanjay Kumar, Advocate

For the Respondent-State : Mr. Prashant Pratap, G.P.-6

For Respondents 8 & 9 : Mr. S.B.K. Manglam, Advocate

(In CWJC No. 19675 of 2014)

For the Petitioner/s : Mr. Rajesh Kumar Dubey, Advocate

For the Respondent-State : Mr. Prabaht Kumar Singh, SC-12

For the private respondent: Mr. Y.V. Giri, Sr. Advocate with

Mr. Sanjay Kumar, Advocate

For the Election Authority: Mr. Mukesh Kumar (in both the cases)

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 21-05-2015

The two writ petitions which have been heard together and are being disposed of by this common judgment though raise distinct grievances but both are directed towards the same issue i.e. updating the voter list published in respect of the Datiyana Primary Agriculture Credit Co-operative Society, (hereinafter referred to as ‘the Society’), Block-Bikram in the District of Patna.

The foundation of the two writ petitions rests on two orders of this Court which according to the petitioner in CWJC No. 17981 of 2014 is not being correctly applied while the writ petitioners in CWJC No. 19675 of 2014 complain of non-compliance. In each of the two orders directions have been issued by this Court to the Returning Officer-cum-Block Development Officer of the block concerned for consideration of the claim of such of the voters whose name though appeared in the voter list of 2009 but was deleted in the voter list of 2014 malafidely and without any reason.

For the sake of convenience I would reproduce the orders passed by this Court which have been relied upon by the two petitioners in support of their respective claims.

Whereas the petitioner in CWJC No. 19675 of 2014 has relied upon the direction of a Division Bench of this Court in CWJC No. 17931 of 2014 (Sidarsh Shankar vs. The State of Bihar & Ors.) placed at Annexure-4/B to the writ petition which runs in paragraph-5, 6 and 7 as follows:

“5. We also observe that any member of the PACS who was included in the voter list of 2009 and has not incurred disqualification, yet his name deleted from the voter list of the concerned PACS published for the year 2014 election be included in the voter list of the concerned PACS published for the present election. Aforesaid direction we have issued only because it has come to our notice that many such persons who were included in the voter list of 2009 have been deleted from the 2014 voter list without incurring any disqualification.

6. With the aforesaid direction, this application is disposed of.

7. Let this order be communicated through FAX to the Secretary Co-operative, Chair Person Bihar State Election Authority and Collector Lakhisarai for transmission of the same to the Block Development Officer Ramgarh Chowk on payment of cost by the petitioner. A copy of this order be

also given to Principal Additional Advocate General for ensuring its general application by the authorities of the Government to avoid harassment to the members of the different PACS.”

On the other hand, the petitioner in CWJC No. 17981 of 2014 has complained of misinterpretation of the order passed by this Court in CWJC No. 16554 of 2014 (Ajay Kumar vs. State) placed at Annexure-5 to the writ petition by the respondents, the relevant extract of which runs as follows:

“Considering the large scale grievances put forth before this Court by the voters whose name appeared in the voter list of 2009 but stands deleted from the voter list of 2014 without any justified reason, this Court would direct all the Returning Officers- cum- Block Development Officers concerned who are in seisin with the work of correction of the voter list for the ensuing Co-operative Societies election 2014, to ensure that such of the persons whose names appeared in the voter-list of 2009 and has been deleted from the voter-list of 2014 and a complaint has been received in this regard, then immediate steps should be taken for inclusion of their names in the voter-list of 2014, unless and until there are circumstances which warrant their omission in the voter-list of 2014.

Let a copy of this order be handed over to Mr. Mukesh Kumar Thakur, learned counsel appearing

for the State Election Authority for its circulation amongst all the Returning officers-cum-Block Development Officers as well as the District Co-operative Officers concerned, for ensuring compliance of this order.”

The petitioner in CWJC No. 17981 of 2014 is the Chairman of the Society and charges the private respondents of misleading this Court to obtain the order for inclusion of their names in the voter list vide order passed in CWJC No. 17058 of 2014. It is the contention of the petitioner Chairman that the private respondents who were writ petitioners in CWJC No. 17058 of 2014 were neither voters in the voter list of 2009 nor had they deposited their membership fee for the purpose. It was the contention of the petitioner that by misleading this Court into believing that their names appeared in the voter list of 2009 that they sought a disposal of their writ petition in terms of the order passed by this Court in the case of Ajay Kumar (supra), a copy of which is placed at Annexure-7 to the writ petition.

On the other hand, the writ petitioners in CWJC No. 19675 of 2014 made a complaint on behalf of the left out voters to submit that the Chairman of the Society has been playing foul in the preparation of the voter list. It is their stand that in fact the voter list so presented by the Chairman consisting of 516 names, included 41 out of 69 members leaving out only 28 who were not included. The two petitioners in the said writ petition are admittedly at serial no. 251

and 243 of such list. It is thus the case of the writ petitioners in CWJC No. 19675 of 2014 that the 69 persons whom they represent are entitled for inclusion in the voter list of 2014.

Mr. Y.V. Giri, learned senior counsel has appeared for the Chairman-petitioner in CWJC No. 17981 of 2014 who is also a private respondent in the other writ petition. The State is represented by respective State counsel. The private respondents who are being charged with suppression by the Chairman in CWJC No. 17981 of 2014 are being represented by Mr. S.B.K. Manglam. The State Election Authority is represented by Mr. Mukesh Kumar. Mr. K.K. Sinha has appeared for the Co-operative Bank and the writ petitioner in CWJC No. 19675 of 2014 is represented by Mr. Rajesh Kumar Dubey.

Mr. Y.V. Giri, learned senior counsel appearing for the petitioner-Chairman has broadly argued on the following points:

- (a) The private respondents have misled this Court into believing that their names were included in the voter list of 2009 when in fact they have not even deposited their membership fee;
- (b) The order of this Court in CWJC No. 17058 of 2014 filed by the private respondents has been misapplied by the State Election Authority to direct for inclusion of names of 86 persons as is manifest from the impugned Annexure-9.
- (c) The writ petition filed by the private respondents

was in a representative capacity for inclusion of names of 86 voters and thus was not maintainable.

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- (d) The petitioner though a party to the writ petition and deserved hearing, was not afforded opportunity of hearing.
 - (e) The order passed by this Court in CWJC No. 17058 of 2014 required the Returning Officer-cum-Block Development Officer, Bikram to pass appropriate orders on the grievance raised by the petitioners and there was no direction for inclusion of the names of 86 persons which has been misinterpreted in the direction of the State Election Authority in its order dated 7.10.2014 impugned at Annexure-9 to the writ petition.
 - (f) There is no evidence of deposit of membership fee by the private respondents and which is confirmed by the counter affidavit of the Co-operative Bank.
 - (g) The matter has been thoroughly examined by the District Co-operative Officer and the names of 86 persons were not found fit for inclusion.
 - (h) The voter list submitted by the petitioner-Chairman consisting of 516 names did not include the names of 86 persons since there was no evidence to support a deposit of membership fee.

Mr. Rajesh Kumar Dubey appearing for the writ petitioners in CWJC No. 19675 of 2014 has mainly centered his arguments around the direction passed by the Division Bench in the case of Sidarth Shankar (supra) and to submit that these two petitioners are



espousing the case of 69 members who are other than the 86 members, whose case is subject matter of the first writ petition. He submits that insofar as the case of these 69 members are concerned, 41 out of these 69 were already in the list of 516 members submitted by the Chairman and the dispute only remained with regard to 28 members. He submits all these 69 members were voters in the voter list prepared in the year 2009 but have been arbitrarily removed from the voter list published in the year 2014 for no apparent reason. He submits that insofar as the two petitioners herein are concerned their names appeared at serial no. 251 and 243 respectively of the voter list of 2009. With reference to an order of the Assistant Registrar, Co-operative Society, Danapur Circle, Danapur present at Annexure-1/A to CWJC No. 19675 of 2014, he submits that 144 applications were received in the camp held for enrollment of members and which had been forwarded to the Chairman of the Society through the Branch Manager, Patliputra Central Co-operative Bank for necessary orders thereon. He submits that all these 144 members were granted membership with effect from 30.9.2008 vide the said order. He submits that these 144 members were added in the voter list published in 2009 which consisted of 657 voters, a copy of which is placed at Annexure-2 to the writ petition. He submits that in the voter list published on 30.8.2014, the names of 69 voters were deleted for no



apparent reason and despite their names appearing in the 2009 voter list. It is specifically contended that these 69 persons did not incur any disqualification. He submits that it is rather paradoxical that even when the names of 41 of the 69 members find mention in the list of 516 persons submitted by the Chairman and the dispute remains only in respect of 28 persons, yet the respondents are adversely commenting upon of the 69 voters which manifestly shows arbitrariness and malafides in their actions.

A vehement opposition to the argument of Mr. Giri has been made by Mr. Manglam to submit that the charges of misrepresentation by the private respondents in the earlier round of litigation is wholly incorrect. With reference to the prayer made in the writ petition arising from CWJC No. 17058 of 2014, the complete pleadings whereof has been enclosed at Annexure-R/7 to the counter affidavit filed by the private respondents, it was submitted that no such attempt was made by these petitioners to mislead the Court rather all that they stated before this Court was that they alongwith other 84 were voters in the 2009 voter list but have been deleted in the 2014 voter list and thus the writ petition be disposed of in the light of the directions by this Court in the case of Ajay Kumar (supra). With reference to the order of this Court present at Annexure-7 he submits that there is nothing on the record of the order to demonstrate any



misrepresentation by these petitioners. He submits that whether the stand of the petitioners that they were voters in the 2009 voter list is correct or not was for the Block Development Officer to see and it is taking note of these circumstances that this Court had required the Block Development Officer, Bikram to pass appropriate orders. He thus submits that the allegation made by the petitioner-Chairman charging the private respondents with misrepresentation is a mala fide statement and in the process, the petitioner Chairman has obtained a stay of the election and thus she continues to enjoy the post even beyond her tenure. It was the submission of Mr. Manglam that where as the District Co-operative Officer has no role to play in the matter of preparation of voter list, the report of the District Co-operative Officer dated 16.9.2014 present at Annexure-1 which was enclosed at Annexure-8 to CWJC No. 17058 of 2014 filed by the private respondents demonstrably shows that the Block Development Officer had accepted that the names of these 90 persons appeared in the voter list of 2009. He further submits that the voter list of 516 persons is present at Annexure-1/A to the rejoinder filed by the writ petitioners is not a voter list rather is a membership list of persons who had gained the same until 15.12.2008 and not thereafter. It is his contention that the voter list which was submitted by these private respondents in CWJC No. 17058 was the correct voter list.



Counter affidavits have been filed in the two writ petitions and the claim of the voters as espoused in the two writ petitions are being sought to be contested on grounds that there is no evidence to support the deposit of membership fee by these petitioners who are 86 in number in the first writ petition and 69 in the second writ petition and which is the foundation for the District Co-operative Officer to order for deletion of their names. A separate counter affidavit has been filed by the new incumbent on the post of Block Development Officer, Bikram who is also the Returning Officer for the Society and which presents an entirely different picture to the whole dispute. Since the statutory responsibility of publication of voter list entirely rests upon the Returning Officer in terms of Section 21 I and 21 J of the Bihar Co-operative Societies Rules hence it would be appropriate to appreciate the stand taken by the new incumbent Block Development Officer. The Block Development Officer in paragraph-5 of her counter affidavit has specifically mentioned that there was no record relatable to the Society in question in the office which she joined on 11.9.2014. It is stated that she was informed that the records were handed over to the District Co-operative Officer. It is specifically mentioned by the Block Development Officer in paragraph-5 of her counter affidavit filed on 16.2.2015 that the office of the District Co-operative Officer on demand supplied two voter list



and whereas one voter list consisted of 516 names, the second one contained 657 names. She has further stated that there was a third provisional list existing which contained 576 names. This single statement of the Block Development Officer is sufficient to reflect the confusion prevailing in the matter of preparation of the voter list and the action of the respondents in taking up the exercise of addition and deletion of voters.

It has further been stated by the Block Development Officer that her predecessor in office, upon direction received from the State Election Authority, prepared a voter list consisting of 657 persons but soon after she joined the post that she received a direction from the District Co-operative officer as contained in letter no. 1677 dated 16.9.2014 to delete the names of 86 persons and which was complied. She submits that subsequently the Chief Election Officer again issued a letter dated 17.10.2014 for inclusion of names of 86 persons and which again has been complied. She thus submits that the addition and deletion have taken place merely on receiving directions from the superior authorities. The fair stand taken by the present incumbent in the office of the Block who is the Returning Officer for the election of the Society is a complete answer to the circumstances existing.

I have heard learned counsel for the parties and I have



perused the materials on record. Insofar as the charge of Mr. Giri regarding misrepresentation by the private respondents is concerned, I do agree with Mr. Manglam that there was no misrepresentation on their part. Insofar as the issue of the representative character of the earlier writ petition and lack of notice to the Chairman is concerned, in my opinion since the order passed by this Court in the case of Ajay Kumar (supra) is an order in rem vesting right in each member to seek their inclusion in the voter list in the event where their names find mention in the voter list of 2009 and though they have not incurred any disqualification subsequent thereto but yet it has been deleted in the voter list of 2014. The issue was thus open for the Returning Officer to examine whether such grievance has visited any such voters. But then I do agree with the submission of Mr. Giri that no positive direction was given by this Court in CWJC No. 17058 of 2014 regarding inclusion of the names of 86 persons as directed by the Election Authority in his communication dated 07.10.2014. The direction of this Court merely required the Returning Officer-cum-Block Development Officer to consider the grievance of the petitioners in the backdrop of the directions issued in the case of Ajay Kumar (supra) and to dispose of the same. There was no such direction of inclusion of the names of 86 persons.

The issue as it stands right now is that insofar as CWJC No.



17981 of 2014 is concerned, the petitioner Chairman opposes the inclusion of 86 voters under the directives issued by the State Election Authority as contained in Annexure-9 *inter alia* on grounds that there was no evidence to support the membership of these persons and insofar as the other writ petition is concerned, it is the grievance of the two petitioners that in addition to the 86 persons in the 1st writ petition, 69 other voters have been deleted without any reason although 41 out of these 69 are named in the list supplied by the Chairman which consisted of 516 members.

The Block Development Officer in her counter affidavit has explained it all when she submits that there are three voter lists in her possession consisting of 516 names, 657 names and 576 names. Although it is the duty of the Chairman to supply the list of members to the Returning Officer but then in case the Chairman has malafidely deleted the name of some of the members from the list without these members having incurred any kind of disqualification then the remedy for such aggrieved persons lies before the Returning Officer who also happens to be the Block Development Officer of the Block. Rule 7(4) read with Rule 21I and 21J of the Bihar Co-Operative Societies Rules, 1954 vests statutory jurisdiction in the Returning Officer to examine the issue and pass the appropriate orders. In fact this is exactly the directions which was issued by this Court in CWJC No. 17058 of



2014, which has not been correctly appreciated by the Election Authority. The petitioner-Chairman, the private respondents and the writ petitioner in CWJC No. 19675 of 2014 all three have placed reliance upon separate voter list and this dispute has to be adjudicated upon by the statutory authorities vested with such power and who is the Returning Officer-cum-Block Development Officer, Bikram, in the present case.

Having observed as such, I would also reject the contention of Mr. Giri that the name of a member can be deleted on mere non-production of his membership receipt. In my opinion, once the name of any member enters the voter list of the society concerned then unless the said voter / member incurs any disqualification, his name cannot be removed or deleted. In fact there is no onus on any such member who was a voter in the previous election, to produce his membership receipt to support his membership rather it would now be the onus of the Chairman concerned or the Returning Officer to explain why the member voter whose name finds mention in the voter list of the previous election, has been deleted without incurring any disqualification and I shall make it very clear that a non-production of a membership receipt cannot be a reason for such deletion.

A production of receipt supporting the deposit of



membership fee may be an essential pre condition for inclusion in the voter list but once the name has entered the voter list then such requirement stands waived of and the statutory authorities cannot deny the entry of such member in the voter list on grounds of non-production of membership receipt. In other words all such members whose names find mention in the voter list published in the year 2009 do require an answer from the statutory authority as well as the Chairman of the society as to why their names have been deleted and unless the statutory authorities and the Chairman are able to establish that it is by reason of incurring any disqualification that the name has been deleted, it cannot be done on mere grounds of non-production of membership receipt.

Since admittedly the Block Development Officer-cum-Returning Officer, Bikram is in possession of three voter list, she is required to re-consider the claim for inclusion of the names of 86 members insofar as CWJC No. 17981 of 2014 is concerned and 69 members insofar as CWJC No. 19675 of 2014 is concerned on the basis of the materials on record as well as in consideration of the materials produced by the contesting parties in support of their contentions. The matter is remitted to the Returning Officer-cum-Block Development Officer, Bikram for passing appropriate orders on the issue which should be passed within four weeks of the date of

receipt / production of a copy of the order.

The 86 persons in the first writ petition and the 69 persons in the second writ petition shall appear before the Returning Officer-cum-Block Development Officer, Bikram alongwith a copy of this order, the copy of the voter list of 2009 and / or any other document on which they seek to rely upon and which claim of these persons would be disposed of by the Returning Officer-cum-Block Development Officer, Bikram in accordance with law and after opportunity of hearing to the applicants as well as the Chairman of the Society and the sole basis for consideration of the claim of these persons would rest on the foundation whether the name of these persons appeared in the voter list of 2009.

As the election itself has got delayed, hence the Returning Officer cum Block Development Officer, Bikram, shall adhere to the time frame given above and whereafter the Election Authority shall proceed in the matter of holding elections for the Datiyana Primary Agriculture Credit Cooperative Society in accordance with law.

This disposes of the two writ petitions. The interim order passed on 7.11.2014 in CWJC No.17981 of 2014 is vacated.

(Jyoti Saran, J)

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