

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2984 of 2015

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Jitendra Kumar Singh son of Sri Sita Ram Singh resident of village Ghataria, P.S. Ghuraru, District - Gaya, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, District Gaya, Bihar.
3. The Block Development Officer cum Election Officer, Block Guraru, P.S. Guraru, District - Gaya, Bihar.
4. The Joint Registrar, Cooperative Societies, Magadh Division, Gaya, Bihar.
5. Sri Ranjan Kumar Singh son of Late Ranjit Singh resident of village Panaina, P.S. Guraru, District Gaya, Bihar.
6. Sri Jitendra Das son of Sri Jamadar Das, resident of village Ghataira, P.S. Ghuraru, District Gaya, Bihar.
7. Sri Amresh Yadav son of Sri Ramdeo Yadav, resident of village Nirdhan Bigha, P.S. Guraru, District - Gaya, Bihar.
8. Sri Pappu Yadav son of Sri Kuldip Prasad, resident of village Nirdhan Bigha, P.S. Guraru, District - Gaya, Bihar.
9. Sri Kameshwar Prasad son of Sri Balkishun Mahto, resident of village Gudniapura, P.S. Guraru, District Gaya, Bihar.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s: Smt. Binita Singh, GP-31

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-10-2015

Heard Mr. Prabhat Ranjan, learned counsel for the petitioner
and learned counsel for the State.

The petitioner is aggrieved by the order dated 28.01.2015
passed by the Joint Registrar, Cooperative Societies, Magadh
Division, Gaya in Election Dispute No. 07 of 2014-15 whereby the
election of the petitioner as the Chairman, Primary Agriculture Credit

Cooperative Society, Ghataira has been set aside and the election petitioner who is the respondent no. 5 herein has been declared elected.

Pursuant to the notice issued while the respondent nos. 6 to 9 have not chosen to contest, the election petitioner who is the respondent no. 5 has registered appearance through Mr. Lakmesh Marvind.

The parties have been heard at length and with consent of the parties the writ petition is being disposed of at the stage of admission stage itself.

Mr. Prabhat Ranjan, learned counsel appearing on behalf of the petitioner has questioned the impugned order on the following grounds, namely:

- (a) There is no evidence to declare the petitioner a defaulter so as to invalidate his election for the post except the audit report.
- (b) Even in absence of any prayer made by the election petitioner seeking a declaration as a returned candidate as mandated under Section 13(1) of the Bihar State Election Authority Act, 2008 yet the prescribed authority has been gracious enough to declare him elected.



Learned counsel with reference to the election petition, a copy of which is placed at Annexure-1 has submitted that the only ground mentioned in paragraph-6 of the election petition is relying upon the audit report and on this sole account the election petitioner charges the petitioner of being a defaulter of Rs. 6,65,000/- obtained from the society. Learned counsel with reference to Rule 23(1)(b) of the Bihar Cooperative Societies Rules framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act') submits that unless the petitioner is held to be a defaulter of any loan obtained from the society or in respect of any other dues, he cannot be held a defaulter or ineligible to contest the election. Insofar as the audit report is concerned, he submits that the said sum was taken for the business of the society and was not a personal loan of the petitioner. Referring to the stand taken by the Returning Officer in response to the election petition, a copy of which is placed at Annexure-3 he submits that the stand is very clear. With reference to paragraph-4 he submits that the period during which the amount was utilized is mentioned as 01.11.2008 until 31.3.2013 i.e. much before the filing of the nomination. He submits that there is nothing on record to demonstrate that the said amount is yet withheld by the petitioner. With reference to the statement made in paragraph-7 of the reply filed by the Block Development Officer-cum-Returning Officer

he submits that it has been categorically mentioned that no evidence was produced by the election petitioner to hold the petitioner a defaulter. Learned counsel with reference to Annexure-5 submits that the Magadh Central Cooperative Bank Limited, Gaya has issued a 'No Dues Certificate' in favour of the petitioner.

The argument of Mr. Ranjan has been contested by Mr. Lakmesh Marvind whose sheet anchor is the audit report and nothing further. Neither before the prescribed authority nor before this Court has the election petitioner been able to show that any amount was outstanding against the petitioner on the date of filing of the nomination or that he was held to be a defaulter to the society.

I have heard learned counsel for the parties and I have perused the records. In view of the stand taken by the Returning Officer coupled with the 'No Dues Certificate' issued by the Bank and considering that there is a complete vacuum of evidence to hold the petitioner a defaulter to the society or to any other society, in my opinion the reliance by the Prescribed Authority on the audit report which related to a period more than one and half years before the filing of the nomination as also taking note of the statutory provisions underlying Rule 23(1)(b) of the Rules which requires the petitioner to be a candidate free from any liability on the date of filing of the nomination, in my considered opinion the order impugned is based on

no evidence and the finding is perverse. The prescribed authority has further perpetuated the illegality by declaring the election petitioner returned even in absence of any such prayer.

For the reasons aforementioned, the order dated 28.01.2015 passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya in Election Dispute No. 07 of 2014-15 cannot be upheld and is accordingly set aside.

The writ petition is allowed. The consequences shall follow.

S.Sb/-

(Jyoti Saran, J)

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