

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18339 of 2015

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Bajrangi Sharma, Son of Late Jag Narayan Sharma, Resident of Village and
P.O. Tutturkhi, P.S. Konch, District Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Joint Registrar, Co-operative Societies, Bihar, Magadh Division, Gaya.
3. The Bihar State Election Authority, Bihar, Patna through its Secretary
4. The Chief Election Officer, The State Election Authority, Bihar, Patna
5. The District Election Officer, Gaya, District Gaya
6. The Returning Officer, PACCS Election, Konch Block Cum Block Development Officer, Konch, District - Gaya
7. Amresh Kumar Singh, Son of Sri Kant Sharma, Resident of Village and P.O. Tutturkhi, P.S. Konch, District Gaya

.... Respondents

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Appearance :

For the Petitioner : M/s Rekha Prasad and
Shivendra Shankar, Advocate

For Election Authority : Mr. Mukesh Kumar, Advocate

For the State : Mr. Subodh Kumar, A.C. to G.P.14

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 09-12-2015 Heard Mrs. Rekha Prasad, learned counsel for the

petitioner, learned counsel for the State and Mr. Mukesh Kumar,

learned counsel for the Election Authority.

The petitioner is aggrieved by the order dated
19.06.2015 passed by the respondent-Joint Registrar, Co-operative
Societies, Bihar, Magadh Division, Gaya in Election Case No.62
of 2014-15 whereby the election petition has been dismissed on
ground of limitation having been filed beyond the period of 90
days so prescribed under Rule 21(x) of the Bihar Co-operative

Societies Rules, 1959 framed under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as “the Act”).

Mrs. Prasad, learned counsel appearing on behalf of the petitioner while contesting the decision has submitted that the Joint Registrar has mis-directed himself in dismissing the election case as being barred by limitation when upon calculation the 90th day would have fell on 18th of January, 2015 which was a Sunday and on the following day the election petition was filed i.e. 19.1.2015 which would be well within the period of 90 days when counted from 20.10.2014 i.e. the date when the election results were announced.

In my opinion, Mrs. Prasad is correct and the election case was not barred by limitation for if the 90th day fell on Sunday then automatically the election case could be filed only on the next working day which was 19.1.2015 and on which date, the election case admittedly was filed which is a Monday. It is not in dispute that the 90th day was 18.1.2015 and was a Sunday. So far as this issue is concerned, the petitioner has made out a case for indulgence but the problem for the petitioner does not stop here. The copy of the election petition has been placed on record by way of supplementary affidavit and the reliefs prayed by the petitioner include a prayer for recount of the votes. The petitioner



in paragraph-1(ii) has further prayed for a declaration of the result after such recount in favour of the candidate obtaining highest number of valid votes. The petitioner although has arraigned the returned candidate as opposite party no.5 to the election petition but in the nature of the relief so prayed in the election petition which seeks a declaration in favour of the candidate securing the highest number of votes after the recount, the petitioner was required to arraign all the contesting candidates. The stipulations underlying Section 10(ii)(a) of the Bihar State Election Authority Act, 2008, mandates the petitioner to arraign all the candidates who contested the election for the post of Chairman but the petitioner has chosen to only arraign the returned candidate. The election petition, in my opinion, in such circumstances, was not maintainable and suffers from the defect of non-joinder of party which has proved fatal for the petitioner.

In the circumstances set forth, even if the petitioner had made out a case for a remand in view of the incorrect opinion expressed by the Joint Registrar, considering that the election petition itself is not maintainable, this Court even while agreeing with the issue raised by the petitioner, is not persuaded enough to order for remand of the case, for the election petition in its present form itself is held not maintainable and the defect after the expiry

of the limitation period is incapable of being removed.

In the result, the order dated 19.06.2015 passed by the Joint Registrar, Co-operative Societies in Election Case No.62 of 2014-15 is set aside but considering that the election case itself is not maintainable, the writ petition is disposed of.

(Jyoti Saran, J)

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