

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10137 of 2015

=====

Ram Dhyan Yadav, S/o late Babulal Yadav, R/o Village- Gourrhalish, P.S.- Nabi Nagar, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Co-operative Department, Bihar, Patna.
3. The Registrar, Co-operative Societies, Bihar, Patna.
4. The Election office -cum- B Block Development Officer, Nabinagar, Aurangabad.
5. District Co-operative Officer cum Managing Director, Central Co-operative Bank Aurangabad.
6. Parasnath Tiwari, S/o late Jagdish Tiwari, R/o- village, Raywalia Khend, P.S.- Nabinagar, District- Aurangabad.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Kundan Bahadur Singh, SC-22
For private Respondent No.6 : Mr. Arun Kumar

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-02-2016

Heard Mr. Sanjeev Kumar, learned counsel appearing for the petitioner, counsel for the State and Mr. Arun Kumar, learned counsel appearing for the election petitioner who is respondent no.6 in the present writ petition.

The petitioner is aggrieved by the order dated 4.4.2015/26.5.2015 of the Joint Registrar, Cooperative Societies, Magadh Division, Gaya passed in Election Case No. 37 of 2014-15, whereby the Joint Registrar while upholding the allegation raised by the election petitioner regarding the writ petitioner being in default of the society and thus was disqualified under rule 23(1)



of the Bihar Cooperative Societies Rule, 1959 (hereinafter referred to as 'the Rules') framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') read with the provisions of section 12(1)(d)(i) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as 'Act of 2008') to file his nomination, has set aside his election.

Amongst the several issues raised by Mr. Sanjeev Kumar, learned counsel for the petitioner one of the issues raised is that a disqualification under rule 23(1) of 'the Rules' cannot be a subject matter of an election dispute and the election cannot be set aside on this account in exercise of powers vested in the prescribed authority under the 'Act of 2008' read with the provisions of 'the Act'. It is finding substance on the issue raised that notice was issued to the election petitioner who has responded to by filing counter affidavit while the Registrar of the Cooperative Societies has also filed his affidavit on the contest.

On merits Mr. Sanjeev Kumar has turned to the affidavit of the private respondent to submit that even by the document so enclosed by the election petitioner it is confirmed that whatsoever money was advanced to the petitioner, was returned by the petitioner as manifest from page 22 to 24 of the counter affidavit of respondent no.6 read with running page 50-51 of the

writ proceedings. He thus submits that neither on maintainability nor on merits the dispute was sustainable and the Joint Registrar, Cooperative Societies completely misdirected himself to pass the impugned order.

The admission made in paragraphs 6 to 8 of the counter affidavit filed by the Registrar, Cooperative Societies by itself is sufficient to allow the writ petition where he has admitted that a prayer for disqualification under rule 23(1) of 'the Rules' cannot be a subject matter of an election dispute. He has further admitted that the *Amanat* so complained of by the election petitioner to maintain the election dispute is not a loan rather is a money advanced for the functioning of the society and does not attract the provisions of rule 23(1) of 'the Rules'. He has also admitted that until such time that the writ petitioner was held responsible of misuse of the said funds in a duly constituted proceeding, it could not be a basis for disqualification.

The private respondent has appeared and Mr. Arun Kumar sanguinely canvassing his case has submitted that money was advanced to the petitioner who has not chosen to refund the same to the society and he was thus disqualified under rule 23 of 'the Rules' which by itself is enough for cessation of his membership as well as his election.

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

As I have already indicated the lapse already stands admitted by the Registrar, Cooperative Societies. It is not in dispute that the disqualification so alleged against the petitioner was ever contested before the proper forum by filing an appropriate application with such prayer. The election petitioner has taken a short route to question the election of the writ petitioner by taking recourse to the disqualification clause present in rule 23 (1) of 'the Rules'. No doubt rules 24 and 25 of 'the Rules' disqualifies a person from holding membership of the society no sooner an order of disqualification is passed but then such finding has to be passed in a duly constituted proceeding and not in an election dispute and until such time any such opinion is recorded by the appropriate authority in a duly constituted proceeding, a returned candidate cannot be ousted. Considering the nature of allegation, in my opinion, the election petition itself was not maintainable for it raises an electoral dispute while seeking an answer on disqualification of membership. The election petitioner was knocking a wrong forum for the nature of grievance raised.

For the reasons aforementioned, the order impugned dated 4.4.2015/26.5.2015 passed by the Joint Registrar,

Cooperative Societies, Magadh Division, Gaya in Election Case No.37 of 2014-15 is set aside and the petitioner is restored to his post of Chairman, Dhergo Primary Agriculture Credit Cooperative Society, Aurangabad.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--