

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.654 of 2016

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Manoj Kumar Yadav son of Sri Banarsi Yadav resident of Village-
Tetarahi, P.S.- Khodawandpur, District- Begusarai.

.... Petitioner/s

Versus

1. The Bihar State Election Authority, Patna
2. The Registrar, Co-operative Societies Department, Government of Bihar, Patna
3. The Joint Registrar, Co-operative Societies, Bhagalpur Commissioner, Bhagalpur.
4. The District Co-operative Officer, Begusarai.
5. The Election Officer-cum-Block Development Officer, Khodawandpur, District- Bhagalpur.
6. The Block Co-operative Officer, Khodawandpur, Distt- Begusarai.
7. Ram Pravesh Mahto, Son of Late Baldar Mahto resident of Village- Mirjapur, P.S.- Khodawandpur, Distt- Begusarai.
8. Tarun Kumar Raushan Son of Sri Gopal Prasad Singh resident of Village- Mirjapur, P.S.- Khodawandpur, Distt- Begusarai.
9. Rajani Ranjan Mahto, son of Late Nirju Mahto, resident of Village- Mirjapur, P.S.- Khodawandpur, Distt- Begusarai.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Abhay Kumar Jha, Advocate
For the Respondent/s : Mr. Mithilesh Kumar Pathak, SC-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 14-01-2016 Mr. Gajendra Kumar Jha, learned counsel for the petitioner, learned counsel for the State and Mr. Mukesh Kumar for the State Election Authority.

The petitioner is aggrieved by the order dated 19.9.2015 passed by the Joint Registrar, Bhagalpur Division, Bhagalpur in Election Case No. 23 of 2015 whereby the election case has been dismissed.

Fact briefly stated is that the petitioner along with the respondent no. 7 contested the post of Chairman, Bara Primary

Agriculture Credit Cooperative Society, Block-Khodawandpur in the district of Begusarai in which the respondent no. 7 was returned and the petitioner being aggrieved questioned his election on two grounds, namely:

- a) That the ballot papers did not carry prescribed mark; and
- b) That the voter list was not in tune with the statutory provisions.

The Joint Registrar, Cooperative Societies, Bhagalpur Division, Bhagalpur by the impugned order placed at Annexure-1 has dismissed the case upon consideration of the issues and the petitioner being aggrieved is before this Court.

I have heard Mr. Jha, learned counsel for the petitioner, counsel for the State and State Election Authority and I have perused the records. Insofar as the issue of voter list is concerned, the petitioner having taken a calculated risk and contested the election on the voter list, he cannot be permitted to question the same in the election case after losing the contest.

Insofar as the issue regarding the mark on the ballots is concerned, according to Mr. Jha the guidelines prescribes a tick (✓) mark to be put on the ballots but the ballots contained a straight line which was not in tune with the guidelines. He submits that this departure from the guidelines necessitated a recount of the votes which were in tune with the statutory prescriptions and which has not been carried out. In my opinion,

the argument advanced is not sustainable on more than one grounds' namely;

- (i) The guidelines of the election authority are directory and have to be read along with the statutory prescriptions underlying the Bihar Cooperative Societies Act, 1935 and the rules framed thereunder.
- (ii) In view of the statutory prescriptions underlying Rule 21S read with Rule 21U of the rules framed under the Bihar Cooperative Societies Act, 1935, whereas the mark to be put on a ballot is a cross (x) mark and a departure therefrom stands explained in Rule 21U(3) in which it is clearly mentioned that a ballot paper which does not contain the prescribed mark cannot be rejected on such grounds if the intent of the vote is clear as regarding the vote cast in respect of a particular candidate.

Having heard learned counsel for the parties and in view of the clarification so provided under the proviso to Rule 21U(3) read with the prescription on the rejection of the ballot provided under Rule 21U(2), I am not persuaded to interfere with the opinion expressed by the Joint Registrar to interfere therewith. The writ petition is dismissed.

S.Sb/-

(Jyoti Saran, J)

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