

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16175 of 2015

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1. Ram Suchit Singh Son of Late Devendra Singh, Vill. + P.O.- Chiraila, P.S.- Kasma, District- Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Co-operative Department, Govt. of Bihar, Patna
2. The Registrar, Co-operative Societies, Bihar, Patna
3. District Co-operative Officer, Aurangabad
4. Baghawra Primary Agriculture Credit Co-operative Society Ltd., through its Chairman
5. Udit Yadav, S/o- Marchhu Yadav, resident of village- Baghawra, P.O.- Bakshibigha, P.s.- Kasma, Rafiganj, District- Aurangabad
6. Joint Registrar, Cooperative Societies, Magadh Division, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar Singh, Adv.
Mr. Surendra Kumar Mishra, Adv.
For the Respondent/s : Mr. Harish Kumar, G.P.32
For the Private respondent: Mr. Arun Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-02-2016

Heard Mr. Manish Kumar Singh, learned counsel for the petitioner, Mr. Harish Kumar, learned G.P.32 for the State and Mr. Arun Kumar for the private respondents.

The petitioner is aggrieved by the order dated 22.8.2015/9.9.2015 passed by the Joint Registrar, Cooperative Society, Magadh Division, Gaya in Dispute Case No. 40 of 2015 circulated vide memo No. 929 dated 16.9.2015 whereby the Joint Registrar has held the petitioner ineligible to hold the post of the Chairman of the Baghawra Primary Agriculture Credit Cooperative

society (hereinafter referred to as the 'PACS') District- Aurangabad and has also set aside his election.

Mr. Singh learned counsel appearing on behalf of the petitioner has invited the attention of this Court to the copy of the miscellaneous case present at Annexure-1 to submit that the prayer itself is misconceived and even before seeking a disqualification of the petitioner in terms of the Rule 23 or Rule 8 of the Bihar Cooperative Societies Rules ,1959 (hereinafter referred to as 'the Rules') framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act'), the election petitioner has simply proceeded to pray for a declaration to cease the functioning of the petitioner as the Chairman of the Society.

Mr. Singh with reference to the allegation present at paragraphs 4 to 7 of the election petition submits that save and except of a wild allegation regarding withdrawal of Rs. 2 lacs by the petitioner as the Chairman of the Society, there is nothing in the miscellaneous case to establish that the petitioner was in default of the society within the meaning of Rule 23. With reference to the findings recorded by the Joint Registrar in the impugned order it is argued that even while the Joint Registrar has admitted that the money so withdrawn by the petitioner is being utilized for the business of the society yet merely because a portion thereof remains in the custody

of the petitioner that the Joint Registrar in the **interest of justice** has proceeded to disqualify the petitioner and consequently unseat him.

The argument of Mr. Singh has been contested by Mr. Harish Kumar learned counsel for the State as well as Mr. Arun Kumar for the private respondent who submit that since it is admitted that the petitioner had withdrawn a sum of Rs. 2 lacs which remains with him, he was in default of the society on the date he had filed his nomination and as a consequence was not eligible to contest the election.

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

Whereas the Rule 23 of the Rules disqualifies any person from contesting an election to a Managing Committee if he incurs any of the disqualifications mentioned in the said rule, the consequences are mentioned in Rules 24 and 25 of the Rules which provide that even if a member is elected to the post of the Managing Committee, no sooner he ceases to be a member of the society or incurs any of the disqualifications mentioned in the Rule 8 or Rule 23, that he would cease to hold office. Meaning thereby, even if a returned candidate would incur any of the disqualifications mentioned in Rule 24, the consequences would result in reversing his election. Rule 23 lists the various conditions in which member can be held ineligible to hold



office of the Managing Committee. In so far as the present case is concerned, the only charge against the petitioner is of withdrawal of Rs. 2 lacs from the account of the society for business purposes with no further charge of misappropriating or of using the said money for his personal use. Now in absence of any order of disqualification passed by a competent forum that the petitioner was in default of the society or had incurred a disqualification, in my opinion, a mere withdrawal ipso facto would not disqualify an elected member to continue in office until such time that there is an order of disqualification by a competent forum in a duly constituted proceedings.

The present miscellaneous case has proceeded on a presumption that the petitioner becomes a defaulter on a mere withdrawal. The prayer made in paragraph 14 of the miscellaneous case, a copy of which is present at Annexure-1 simply seeks a declaration to cease the petitioner from functioning as the Chairman of the society without even making a prayer to first seek his disqualification under any of the clauses present in Rule 23 or Rule 8 of the rules. The complete non-application of mind by the Joint Registrar is reflected from his findings present in the impugned order where even while accepting that the money withdrawn was being used for the business purpose and even in absence of any conclusive

finding whether the petitioner has incurred ineligibility under Rule 8 or Rule 23 of the rules, that he has held his election illegal in the interest of justice. The findings recorded by the Joint Registrar is dehors the provisions of the Rule 23 and Rule 24 and have been passed with complete non application of mind and on complete misappreciation of the statutory provisions.

For the reasons so recorded, the order dated 22.08.2015/09.09.2015 passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya in Misc. Dispute Case No. 40 of 2015 cannot be upheld and is set aside, the writ petition is allowed. The petitioner stands restored to his post.

(Jyoti Saran, J)

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