

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17864 of 2014

=====

Rekha Devi Wife of Vishnu Kant Mukhiya Resident of Village and P.O. - Balthari,
P.S. - Ghanshyampur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Bihar State Election Authority through its Chief Election Officer, 32 Harding Road, Patna - 800001.
4. The Chief Election Officer, Bihar State Election Authority, Bihar, Patna.
5. The District Magistrate-cum-District Election Officer, Darbhanga.
6. The District Cooperative Officer, Darbhanga.
7. The Block Development Officer-cum-Election Officer, Gora Bauram, Darbhanga.
8. Gora Bauram Prakhand Matasyajivi Sahyog Samiti Ltd. through its secretary, Gora Bauram, Darbhanga.
9. Pawan Sahni Son of Banarsi Sahni Resident of Village - Jirath, P.O. - Biraul, P.S. - Ghanshyampur, District - Darbhanga, Current Secretary of Gora Bauram Prakhand Matasyajivi Sahyog Samiti Ltd.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashish Giri

For the Respondent/s : Mr. GA1- SHYAM KISHORE SHARMA

For the Election Authority Mr. Mukesh Kumar

For the Respondent No. 9 Mr. Mukesh Kumar

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-01-2016

Heard Mr. Ashish Giri learned counsel appearing on behalf of the petitioner, learned counsel for the State, Mr. Mukesh Kumar, learned counsel for the State Election Authority and Mr. Mukesh Kumar for the Respondent No. 9.

The petitioner is aggrieved by the order dated 22.07.2014 passed by the Registrar, Co-operative Societies, Bihar, Patna whereby the election dispute raised by the petitioner vide Election Petition No.

143 of 2012 has been dismissed. A copy of such order is placed at Annexure-5 of the writ petition.

The petitioner while filing Election Case No. 143 of 2012 had also raised another dispute vide Election Case No. 144 of 2012 seeking a re-counting of the votes cast which was heard analogous with Election Case No. 143 of 2012 and by common order passed on 17.06.2014/22.07.2014, the Registrar, Co-operative has dismissed the election petition.

Facts of the case briefly stated is that the petitioner, the respondent No. 9 and some others contested the post of Secretary, Gora Bauram Prakhanda Matasyajivi Sahyog Samiti Ltd. in which election, the Respondent No. 9 was returned by a difference of 63 votes as against the petitioner. The petitioner being aggrieved filed two election cases bearing No. 143 of 2012 with a prayer to set aside the election of the returned candidate and to hold fresh elections and Election Case bearing No. 144 of 2012 in which a prayer for re-counting was made. Both the election cases were heard analogous by the Registrar, Co-operative Societies and have been dismissed and this petitioner being aggrieved, is before the Court.

Mr. Giri, learned counsel appearing on behalf of the petitioner has raised the following issues to question the impugned order:-

- a) The order does not deal with the issues raised.
- b) The election was marred by non-adherence of the statutory

prescription underlying Rule 21 J(a) and 21M of the rules framed under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act').

- c) The Election Officer was not nominated as per Section 5(2) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008').
- d) 192 members were illegally included in the voter list and since the difference of votes between the petitioner and the returned candidate is only 963 hence, this illegality has materially affected the result of the election.

Mr. Giri has drawn the attention of this Court to the Election Schedule present at Annexure-'C' of the election petition placed on record vide Annexure-1 to the writ petition to submit that although Rule 21 K of the Rules prescribes for a minimum period of seven days to file any objection against a voter list and the election schedule under Rule 21 K (3) is to be included as per the provisions underlying Rule 21 M but a plain reading of the Election programme present at page 51 would confirm the infirmity as only three days were given to an objector to file any objection against the voter list.

Mr. Giri has referred to Annexure-6 of the election petition enclosed at Annexure-1 to submit that although an objection to the voter list was filed by the petitioner but was not acted upon. He submits with reference to a judgment of the Supreme Court reported



in **2001(8) SCC 509 (Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra & Ors.)** that an infirmity in the voter list can only be raised in an election dispute and cannot be a subject-matter of writ petition. He thus submits that notwithstanding the fact that the petitioner has participated and contested the election, that he had already raised objections to the voter list, he cannot be disqualified to raise an election dispute on this count. Mr. Giri again with reference to the provisions of Section 12(1)(d)(iv) of the Act of 2008 has submitted that any non-compliance of the statutory provisions has been mandated as an election dispute and since this mandate has not been correctly followed by the elections authorities and which has prejudiced the case of the petitioner in the election and hence, the election dispute was maintainable and was worthy of indulgence. He submits in the present case, the prescribed authority has concluded on a premise that the petitioner was questioning the voter list on its preparation when the fact is that the petitioner had raised ineligibility of 192 members to enter the voter list which is distinct and had to be appreciated on its own value.

The argument of Mr. Giri has been contested by Mr. Mukesh Kumar, learned counsel appearing on behalf of the State Election Authority as well as Mr. Mukesh Kumar, learned counsel for the private respondent. Whereas Mr. Mukesh Kumar, learned counsel



appearing for the State Election Authority has submitted that the election programme was in tune with the statutory prescription, it is the argument of Mr. Mukesh Kumar, learned counsel appearing for the returned candidate that the election case itself was not maintainable for the petitioner even while praying for re-election had not chosen to arraign the other contesting candidates as a party to the dispute, namely, Ashok Mukhia, Parmeshwar Sahni, Manoj Mukhia and Ruko Devi who had also contested the post of Secretary but were not added as party to the election dispute.

I have heard the parties and have perused the record.

In so far as the non-adherence to the relevant Rules by the election authority is concerned, even though the election programme is not strictly in tune with the provisions of Rule 21 J or 21-M as required under the Rules but considering that it has not resulted in prejudice to any party. I am not persuaded to interfere with the result of this count.

Insofar as issue of non-adherence to the period prescribed for filing objection to the voter list is concerned, even if the election schedule did not provide for the prescribed 7 days notice period for filing any objection, the objections so filed by the petitioner which is present at Annexure-6 of the election petition placed at Annexure-1 to the writ petition is not descriptive and was not worthy of action. It is rightly stated at the Bar by Mr. Mukesh Kumar appearing for the

returned candidate that the petitioner at the relevant time holding the post of Adhoc Secretary when the names were furnished to the Election Officer for preparation of voter list in tune for Rule 21J of the Rules cannot complain against a faulty voter list.

Annexure-6 to the election petition is the so called objection filed by the petitioner before the State Election Authority complaining of infirmity in voter list. The objection, has to be rejected on one more than one counts. Firstly, it is addressed to a wrong authority for in view of Rule 21 J, any such objection can only be addressed to the Election Officer for disposal and secondly it is non-descriptive. Even when the petitioner raises objection to the inclusion of 192 candidates, the description of these members of ominously missing from the objection. Obviously, such vague objection could not have been acted upon.

This would bring this Court to the issue whether on the oral statement of the petitioner that 192 members had illegally included in the voter list itself is sufficient to interfere with the election result. In my opinion, the answer has to be in negative. Again, the reasons are more than one. Firstly, in the whole of the election petition, there is no whisper by the petitioner that these 192 persons whom he alleges to be included illegally in the voter list have contributed to the success of the returned candidate and thus merely because there is a difference between the returned candidate and the petitioner of 63 votes, no

interference is called for in the result or such oral statement of the petitioner regarding illegal inclusion of 192 members until it is established by evidence that these 192 members have contributed to the success of the returned candidate.

For the reasons so discussed, I am not persuaded to interfere with the impugned order. The writ petition is dismissed accordingly.

(Jyoti Saran, J)

Saif/-

U		T	
---	--	---	--