

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7876 of 2015

With

I.A. No.6315 of 2015

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Shailendra Kumar Singh, Son of Ram Nawmi Singh. Resident of village - Gumati, P.S.- Rajapakar, Dist.- Vaishali, At present Chairman of Chuykunda @ Milki PACS Hajipur Block, Dist.- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Registrar Co-operative Societies (Bihar) Patna.
3. Sri P.K. Sinha Addl. Registrar Co-operative Society (Bihar) Patna.
4. Bihar State Election Authority Bihar Patna through Secretary.
5. B.D.O. cum Election Officer Hajipur Block, Vaishali.
6. Jitendra Kumar, Son of Birendra Prasad Sharma, Resident of village - Loma, P.S.- Rajapakar, Dist.- Vaishali, Ex-Chairman of Chukunda @ Milki PACS in Hajipur Block at Vaishali District.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Yadav

Mr. Raja Ram Rai

For the Respondent/s : Mr. Uday Shankar Sharan Singh, G.P.-1

For the Respondent No. 6 : Mr. K.K. Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

4 17-02-2016 Heard Mr. S.D. Yadav, learned counsel appearing for the petitioner, learned counsel for the State, learned counsel for the State Election Authority and Mr. K.K. Sinha for the respondent no.6.

The petitioner is aggrieved by the order dated 10.7.2015/14.7.2015 passed by the Additional Registrar, Cooperative Societies, Bihar, Patna in Election Dispute Case No.20 of 2015 whereby the Additional Registrar has held that for the default on the part of the petitioner not to disclose the certificate proceedings initiated against him, he has incurred the disqualification under Section 12(1) (d) (i) of the Bihar State

Election Authority Act, 2008 (hereinafter referred to as 'the Act') and the acceptance of the nomination of the petitioner was improper. The Election has been set aside.

I have heard Mr. Yadav, learned counsel appearing for the petitioner, learned counsel for the State, learned counsel for the State Election Authority as well as Mr. Sinha, learned counsel appearing for the private respondent.

It is rather surprising that even when the very basis on which the election case has been instituted by the private respondent rests on a loan taken by the petitioner and which charge has not been accepted by the Additional Registrar while giving his opinion yet he has proceeded to unsuit the petitioner on grounds of pendency of the certificate case and the warrant issued against him.

In my opinion where the foundation for maintaining the election case itself was disbelieved by the Additional Registrar then in absence of any order of cognizance or any judgment and order of conviction by any court, the petitioner could not have been held guilty of improper disclosure or of withholding information. Leaving the debate open for discussion in an appropriate proceedings on the issue whether a pendency of certificate proceeding would come within purview of mandatory disclosure, in my opinion in absence of an order of cognizance or judgment of conviction, the nondisclosure by the petitioner of

the pending certificate proceedings did not suffer from any suppression. The infirmity does not stop here for in my opinion the election case itself was not maintainable, suffering from the vice of non-joinder of necessary parties. Whereas Section 10(2)(a) of 'the Act' mandates that the moment the election petitioner while questioning the declaration in favour of the returned candidate also seeks a declaration in his own favour or any other contestant then all the contestant have to be arraigned but this mandate remains unfulfilled. The names of the contestants are mentioned in paragraph-9 of the writ petition and they have not been made party to the election dispute. Thus either on merits or on maintainability the election dispute was not worthy of indulgence.

For the reasons aforementioned the order dated 10.7.2015/14.7.2015 passed by the Additional Registrar, Cooperative Societies, Bihar, Patna in Election Case No. 20 of 2015 is set aside. The petitioner stand restored to his post.

The writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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