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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13939 of 2016
Along with
Interlocutory Application No. 7166 of 2016
And
Interlocutory Application No. 7252 of 2016

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1. Bihar Asainik Seva Sahkari Grih Nirman Samiti Limited, P.O. Ashiana Nagar, P.O. Ashiana Nagar, Magistrate Colony, Patna, through its Ex-President, Raghunandan Prasad (I.A.S., Retired).
2. Raghunandan Prasad (I.As., Retired), Ex- President, Bihar Asainik Seva Sahkari Grih Nirman Samiti Limited, P.O. Ashiana Nagar, P.O. Ashiana Nagar, Magistrate Colony, Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Bihar State Cooperative Department, Vikash Bhawan, New Secretariat, Patna.
2. Bihar State Election Authority through its Chairman, 32 Harding Road, Patna.
3. The Chairman-cum-Chief Election Officer, Bihar State Election Authority, 32 Harding Road, Patna.
4. The Registrar, Cooperative Department, Vikash Bhawan, New Secretariat, Patna.
5. The Collector-cum-District Election Officer (Cooperative Societies), Budh Marg, Patna.
6. The District Cooperative Officer, Budh Marg, Patna.
7. The Block Development Officer-cum-Election Officer, Behind Regent Cinema, East of Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagnnath Singh, Advocate.
For the State	:	Mr. Chitranjan Sinha- PAAG-2
		Mr. Shashi Shekhar Kumar Prasad, AC to PAAG-2
For the Resp. No. 2&3	:	Mr. Mukesh Kumar, Advocate.
For the Intervener	:	Mr. S.N.Pathak, Advocate.
		Mr. Sandip Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 08-11-2016

Heard learned counsel for the petitioners, the State and proposed interveners.

2. The challenge in the present writ application is to the order contained in letter No. 385 dated 24.05.2016 passed by the

Chief Election Officer, with regard to preparation of voters list and also Memo No. 499 dated 21.07.2016 notifying the program of election for constituting the ad-hoc Board of the Bihar Asainik Seva Swablambi Sahkari Grih Nirman Samiti Limited (hereinafter referred to as the 'Society).

3. The brief undisputed facts are as under:

The term of the elected Board of the Society ended on 28.12.2015. Thereafter, a request was made by the erstwhile honourary Secretary of the Society for constituting an ad-hoc Board. Pursuant thereto, the same was constituted on 31.03.2016 for conducting election, which was held in August, 2016. The ad-hoc Board was entrusted, as per the provisions of Bihar Self-Supporting Co-operative Societies Act, 1996 (hereinafter referred to as the 'Act'), only for the purposes of conducting the elections. The ad-hoc Board, upon completion of the formalities, referred the matter to the Bihar State Election Authority (hereinafter referred to as the 'Authority') for conducting the elections, in terms of Sections 29(1) and (2) of the Act. As a consequence, the authorities had issued the impugned orders.

4. The challenge to such action is mainly on the ground that the term of the ad-hoc Board was itself for a maximum period of one month from the date of constitution i.e., 31.03.2016, and thus, till the date of election in August, 2016, there was a time lag of over five

months, which rendered the entire exercise illegal as the ad-hoc Board itself ceased to exist in the eyes of law, as per Section 29(10) of the Act, beyond 30.04.2016.

5. Learned counsel for the petitioners submits that even if it is admitted for the sake of argument, without admitting the same, that the ad-hoc Board was constituted under Section 29(7) of the Act, the period ended on 30.06.2016 and any action subsequent thereto, with regard to the elections, stands vitiated in law.

6. From the submissions, the issue which arises for consideration is as to how a new Board of the Society has to be elected when the term of the previously elected Board has come to an end and no election held before expiry of its term. For the purposes of deciding the same, the following provisions of the Act being relevant, are quoted hereinbelow:

> ***"29. Elections**.- xxxxx*
> *(7) Where a board does not take necessary steps to conduct elections before the expiry of the terms of the directors, or where there are no directors remaining on the board, a minimum of five percent of total members of the Co-operative Society may jointly convene a general meeting of the members, for appointing an ad-hoc board for the specific purpose of conducting elections.*
> *(8) The term of ad-hoc board so appointed shall not exceed three months.*
> *(9) If an ad-hoc board is not constituted in accordance with sub-section (7), it shall be duty of the federation to inform the Registrar.*
> *(10) The Registrar on the report of the federation under sub-section (9) may suo moto convene a general meeting for appointing another ad-hoc for the specified purpose of conducting elections.*
> *(11) The term of the ad-hoc board appointed under*

> *sub-section (10) shall not exceed one month and this ad-hoc board shall cease to function as soon as a regular board is elected in accordance with the bye-laws.*
> *xxxxx"*

7. From a plain reading of the above, it is clear that where the term of the Society has expired and if elections are not held prior to the same, a minimum of 5% of the total members of the Co-operative Society may jointly convene a general meeting of the members, for appointing an ad-hoc Board for the specific purpose of conducting elections and in such case, the term of the ad-hoc Board so appointed, shall not exceed three months.

8. In the present case, a perusal of the Letter No. 127 dated 22.01.2016 clearly indicates that it was on the request of the working honorary Secretary of the Society, to the Co-operative Extension Officer, a meeting was held for constituting of the ad-hoc Board, which was done on 31.03.2016. Thus, even if the meeting was not *suo moto* held by the members themselves and the officers of the Co-operative Department were involved, it cannot be said that such election was not held under Section 29(7) of the Act, since initiative was taken by the members themselves. Moreover, sub-section (10) of Section 29 stipulates for appointing of ad-hoc Board by the Registrar on the report of the federation by *suo moto* convening a general meeting. This is not the fact in the present case.

9. Having held that the ad-hoc Board was constituted under Section 29(7) of the Act, it has now to be seen as to whether, within the period of three months, it had performed the required functions with regard to conducting of elections or not.

10. Learned counsel for the petitioner has not been able to show any act done by the ad-hoc Board, after 30.06.2016, so as to indicate that it was involved in any way beyond the said date in the elections. The Act provides for conducting of the election by the Authority and, thus, the role of the ad-hoc Board is limited to the extent of preparing the ground work for the elections and forwarding all such relevant documents/information to the Authority, which undertakes the actual exercise of conducting the elections.

11. In the present case, all actions from 01.07.2016 have been taken by the Authority without there being any role of the ad-hoc Board appointed on 31.03.2016. Thus, the Court holds that there is no infirmity in the action of the Authority in going ahead with the conduct of election by declaring the scheduled date for such election. At this stage, it would also be relevant to indicate that the petitioner himself participated in the election and has also cast his vote. In such a situation, it would not be within his capacity to challenge the process, after having cast his vote, pursuant to such notification.

12. In view of the aforesaid, the Court does not find any

ground to interfere in the matter and accordingly, the writ application stands dismissed.

13. The stay granted earlier under order dated 23.08.2016 is vacated.

14. The Authority is at liberty to proceed with the election of the Society and take it to the logical conclusion of constituting the Board by declaring the results and grant of certificate to the successful candidates.

15. Interlocutory Applications No. 7166 of 2016 and 7252 of 2016 stand disposed off.

(Ahsanuddin Amanullah, J)

Sujit/-

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