

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18760 of 2015

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Vishal Kumar S/o Pradeep kumar Gupta Vill+ PO- Narkatiya, P.S. Darpa, Distt- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar, through its principal Secretary, Co-Operative Department, Government of Bihar, Patna.
2. The Registrar, Co-operative Society Bihar Patna.
3. District Co-operative Officer-cum-Deputy Election Officer, Narkatiya PACS, East Champaran, Motihari.
4. The Assistant Registrar, Co-operative Societies, Sikarhana Anchal, District- East Champaran Motihari.
5. Block Development Officer, Chaudadano-cum-Election Officer, Narkatiya PACS, East Champaran, -845302
6. Anil Kumar S/o late Sonalal Sah Vill+PO -Narkatiya, P.S. Darpa, Distt East Champaran.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ishwari Singh, Advocate
Mr. Surendra Kumar Mishra, Advocate
For the State : Mr. KINKAR KUMAR, SC-27
For the Respondent No. 6: Mr. Sharda Nand Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-02-2016

Heard Mr. Ishwari Singh, learned counsel appearing for the petitioner, counsel for the State and Mr. Sharda Nand Mishra, learned counsel appearing on behalf of the election petitioner, the private respondent herein.

The petitioner is aggrieved by the order dated 18.9.2015 / 19.10.2015 of the Assistant Registrar, Cooperative Societies, Sikarhana in the District of East Champaran whereby he has directed the Returning Officer-cum-Block Development Officer, Chaudadano in the District of East Champaran for recount of the votes and

following which the Block Development Officer vide Memo No. 570 dated 01.12.2015 has fixed 05.12.2015 as the date of recount.

This matter was heard on 09.12.2015 and while issuing notice to the private respondent it was directed that in case the recount has not taken place the same shall await the outcome of the present proceedings. A counter affidavit has been filed by the respondent no. 2 in the meanwhile. The issues raised by Mr. Ishwari Singh, learned counsel for the petitioner stand noted in the order passed on 09.12.2015 and are as follows:

- (a) The Assistant Registrar exercised *suo motu* jurisdiction under Section 48 of the Bihar Co-operative Societies Act to entertain the election petition has acted without jurisdiction for such power in terms of Section 14A(6) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act') read with Section 48(2) of 'the Act' lies exclusively with the Registrar Co-operative Societies to either hear an election dispute himself or to allocate the same to any authority so the designated with the powers of Registrar under Section 6(2) of 'the Act'.
- (b) The election petition in its present form was not maintainable for the moment the prayer for recount has been made, the election petitioner had to arraign of the contesting candidates which has not been done.
- (c) The election petition also was not maintainable for it contains no consequential prayer after carrying

on recount process.

- (d) The Bihar State Election Authority Act, 2008 and the Rules framed there under provides no such ground for maintaining of election petition exclusively for recount.

The Registrar has filed his affidavit and he relies upon notification of the State Government issued under Section-6 of the Bihar Cooperative Societies Act, 1935 bearing notification no. 594 dated 30.1.2008 placed at Annexure-B to his counter affidavit to justify the exercise undertaken by the Assistant Registrar in suo motu entertaining the election petition. He however does not offer any comment on the merits of the dispute.

A counter affidavit has been filed by the election petitioner and Mr. Sharda Nand Mishra with reference thereto has submitted that the recount has taken place and the writ petitioner has been defeated by a difference of two votes at the hands of the election petitioner-the private respondent herein. The petitioner, however, did not choose to participate in the recount.

I have heard learned counsel for the parties on the issue noted above and have perused the records. A rather peculiar situation has arisen in the present case where following a recount it is the election petitioner who succeeds in the election by two votes but there is no such relief prayed by him in his election case. He does not even seek a declaration in his favour. A copy of the election petition is

placed at Annexure-2 to the writ petition and except for a prayer for recount, neither the private respondent as the election petitioner prays to set aside the election of the writ petitioner nor does he seek a declaration in his favour or in favour of any other candidate. The lacuna is fatal and in such circumstances cannot enure to the benefit of the election petitioner.

Another fact fatal to the election petitioner is that even when a prayer for recount is being made by the election petitioner he does not choose to arraign the other contestants to the post of Chairman of the Society who according to the petitioner are named in paragraph-3(iv) and are seven in number including the writ petitioner and the election petitioner. The last of the infirmity in the proceedings is that the Assistant Registrar did not have a jurisdiction to entertain the election dispute until on reference it was transferred to him by the Registrar under Section 48(2) of the Act bearing in consideration the statutory provisions of Section 14A(6) of 'the Act' which mandates a disposal of election petition in terms of Section 48 of the Act. The legal position on that issue stands discussed in the judgment of this Court since reported in **2015(4) PLJR 359 (Katra Prakhanda Matasyajivi Sahyog Samiti Ltd. vs. State of Bihar)** as well as in a recent judgment arising from CWJC No. 13830 of 2015 (Shamim Tabrej vs. State of Bihar) heard along with CWJC No. 14114 of 2015 (Kundan Kumar vs. State of Bihar) disposed of on 12.2.2016. This

Court taking note of the statutory provisions as well as the scope and intent of the notification bearing No. 594 dated 31.10.2008 relied upon by the Registrar for upholding the jurisdiction by the Assistant Registrar has held that even if a jurisdiction has been so vested by the notification under reference which is in tune with the statutory provisions but such jurisdiction can be exercised by the authorities conferred with the powers of a Registrar under Section 6(2) of 'the Act' to assist the Registrar only when the dispute in question on reference, is referred by the Registrar to their jurisdiction under Section 48(2) of 'the Act'. The issue stands well discussed and requires no further elaboration.

For the reasons aforementioned and in the extraordinary circumstances, the order dated 18.9.2015 / 19.10.2015 passed by the Assistant Registrar, Cooperative Societies in PACS Election Case No. 1 of 2014 cannot be upheld and is accordingly set aside and for the same reason the recount would have no bearing on the result of the election which has returned the writ petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

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