

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16262 of 2015

=====

Pankaj Kumar Mishra son of Late Balram Mishra, resident of village + P.O.-
Sagarpur, P.S.- Sakri, District- Madhubani, Bihar. Presently Chairman of Sagarpur
PACS in Pandaul Block, Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the Registrar, Department of Co-operative Societies,
Vikas Bhawan, Secretariat, Bihar, Patna
2. The Additional Registrar, Co-operative Societies, Vikas Bhawan, Secretariat,
Bihar, Patna
3. The District Magistrate-cum-District Election Officer, Madhubani
4. The Bihar State Election Authority, 32, Harding Road, Patna
5. The Block Development Officer, Pandaul, District- Madhubani
6. Sri Uday Kumar Mishra S/o Sri Surendra Prasad Mishra, resident of village +
P.O.- Sagarpur, P.S.- Sakri, Block- Pandaul, District- Madhubani.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Ajay Kumar Thakur, Sr. Advocate
Mr. Krishna Chandra, Advocate
For the Respondent/s : Mr. VIVEK PRASAD, GP-18

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 03-02-2016

The petitioner questions the order of the Additional Registrar, Cooperative Societies, Bihar, Patna dated 17.8.2015 / 31.8.2015 passed in Election Case No. 219 of 2014 whereby the Additional Registrar while holding that the Returning Officer under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act of 1935') and the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008') and the rules framed thereunder does not possess a power of review and thus once having rejected the nomination of the writ petitioner, he had no jurisdiction

to recall the rejection accept the nomination, which act of review being contrary to the statutory provisions renders the election of the petitioner *void ab initio*.

Facts of the case briefly stated is that the petitioner as well as the respondent no. 6 filed their respective nominations for the post of Chairman, Sagarpur Primary Agriculture Credit Cooperative Society on 18.9.2014. An objection was filed by the respondent no. 6 on 20.9.2014 questioning the eligibility of the writ petitioner to file his nomination inter alia on grounds that he is the Secretary of the Society and thus his eligibility be verified before accepting his candidature. The Returning Officer-cum-Block Development Officer, Pandual in consideration of the objection raised by the respondent no. 6 straightaway rejected the nomination of the petitioner on 20.9.2014 itself. The petitioner filed an application on 26.9.2014 pointing the infirmity and while contesting the charge of the private respondent, he informed that he had resigned from the post on 03.9.2014 much before the filing of the nomination on 18.9.2014 and that he was not drawing any salary for the post. The Returning Officer vide order passed on 30.9.2014 recalled his earlier order rejecting the nomination and the nomination of the petitioner was accepted. The petitioner and the respondent no. 6 contested the election and in which the writ petitioner returned as the Chairman of the Society. In between, the



private respondent filed CWJC No. 17847 of 2014 questioning the acceptance of the nomination of the writ petitioner and which was disposed of with liberty to the private respondent to seek his remedy under the provisions of the 'Act of 2008' read with the provisions of the 'Act of 1935. It is thereafter that the election case in question was filed and which has been allowed by the impugned order whereby the election of the writ petitioner has been set aside and being aggrieved the petitioner is before this Court.

Mr. A.K. Thakur, has appeared for the petitioner, the State and the State Election Authority are represented by the respective counsel and the private respondent no. 6 is represented by Dr. K.N. Singh.

Mr. Thakur, learned counsel for the petitioner has straightaway referred to the objection filed by the private respondent to question the nomination of the petitioner placed at Annexure-R6/E to submit that the private respondent not being sure of the post held by the writ petitioner in the Society, has requested the Returning Officer to verify the position and thereafter accept his candidature. He submits that the Returning Officer instead of verifying the position as requested by the private respondent, straightaway proceeded to reject the nomination of the petitioner on 20.9.2014 itself vide Annexure R6/F inter alia on grounds that the petitioner was not eligible to



contest the election under paragraph-7(3) of the bye-laws of the Society. He submits that apart from the fact that the order was passed behind the back of the petitioner, even otherwise, the petitioner could not have been held ineligible for neither he was a paid staff of the Society nor did he hold any such post on the date of filing of the nomination on 18.9.2014 since the petitioner had already resigned on 03.9.2014. It is thus submitted that neither on merits nor on the principles of natural justice is the order sustainable. He submits that the error committed by the Returning Officer has been set right by him on 30.9.2014 and does not amount to review. Mr. Thakur has referred to the guidelines present in the Hand Book issued by the Bihar State Election Authority and with particular reference to paragraph-3 of the Chapter-11 relating to Scrutiny of Nominations, he submits that the paragraph casts a duty on the Returning Officer to provide sufficient opportunity to a contestant if any objection is raised on his nomination. He submits that the hurriedness with which the nomination has been rejected by the Returning Officer without adhering to paragraph-3 of the guidelines, has been corrected by the Returning Officer in consideration of the position clarified by the petitioner. He further submits that even the prescribed authority while passing the impugned order has rejected the objection raised by the election petitioner who is the private respondent herein but has



misdirected itself in upsetting the election on grounds of absence of review power in the Returning Officer. According to Mr. Thakur once the prescribed authority was of the opinion that the objection raised by the election petitioner was without substance and the petitioner was not ineligible under paragraph-7(3) of the bye laws of the Society in that event, even if the prescribed authority was not satisfied by the exercise of review jurisdiction by the Returning Officer, in the fitness of the things he ought to have quashed the nomination rejection order as well. Learned counsel while reiterating the legal position so well settled under judicial pronouncements submits that since by quashing of the order recalling the rejection of nomination of the petitioner, gave rise to another illegal order, both the orders should have been quashed by the prescribed authority.

The argument of Mr. Thakur has been contested by the counsel for the official respondents and Dr. Singh appearing for the election petitioner, who has supported the impugned order on grounds that the exercise of review power by the Returning Officer to recall the order rejecting the nomination of the writ petitioner is ex parte, without hearing the private respondent and without sanction of law. He submits that the moment the writ petitioner accepts that he was the Secretary of the Society, then it automatically proves that he is a paid employee. He further submits that the resignation submitted by the



petitioner on 3.9.2014 had no meaning since its acceptance by the Chairman of the Society, after the expiry of the term of the Managing Committee, was illegal and without jurisdiction. Learned counsel further with reference to paragraph-5 of Chapter 11 of the guidelines so relied upon by Mr. Thakur, a copy of which is placed at Annexure-J to the supplementary counter affidavit of the respondent no. 6, submits that it is clearly mentioned that once a nomination is rejected, they it becomes final and the order of rejection of nomination could not have been recalled. He submits that apart from the fact that that there is no illegality in the order dated 20.9.2014 of the Returning Officer rejecting the nomination of the petitioner present at Annexure-R6/F to his counter affidavit even if there was any infirmity therein, its challenge could only be by way of an election dispute for the said rejection had attained finality under paragraph-5 of the guidelines. According to Dr. Singh the petitioner being the Secretary of the Society and the records being in his custody he is fully capable of manipulating the records to demonstrate that he was not a paid employee of the Society.

I have heard learned counsel for the parties and I have perused the records. The facts discussed by me at the outset is practically an admitted situation except the dispute regarding the writ petitioner being a salaried employee and the power of the Returning



Officer to recall the order dated 20.9.2014 whereby the nomination of the petitioner was rejected. To appreciate the rival contentions advanced, it would be necessary to refer to some of the provisions of the 'Act of 1935', the 'Act of 2008' and the rules framed thereunder.

The Bihar State Election Authority is constituted under the 'Act of 2008'. Section 14A of 'the Act of 1935' vests jurisdiction in the Bihar State Election Authority to conduct election to the Managing Committee of a Cooperative Society registered under the said Act.

Rule 8 of the Rules discusses the eligibility to gain membership of a Cooperative Society and clause (b) thereof disqualifies a person from the membership of the Society if he is a paid employee of the Society.

Similarly, paragraph-7(3) of the Bye-Laws of the Primary Agriculture Credit Cooperative Society disqualifies a person from membership if he is a paid employee of the Society.

Rule 23(1)(a) mandates that a person shall not be eligible for election to the Managing Committee if he is not a member of the Society.

The two provisions read alongside would mean that a paid employee of a Society cannot enter the membership of the Society and unless he is a member he cannot contest the election to the

Managing Committee.

Rule 21N(1)(i) mandates that a person cannot file nomination unless his names appear in the final voter list and sub-rule (4) to (6) thereof prescribes the process of scrutiny, acceptance and rejection of nomination papers.

Section 10 of the 'Act of 2008' provides that the election to any office of a body cannot be called in question except by way of an election petition and Section-12 which provides the grounds for maintaining such election petition, in sub-section 1(c) provides improper rejection of nomination paper as one such ground.

Coming to the guidelines issued by the State Election Authority relied upon by Mr. Thakur as well Mr. Singh it is noted that whereas paragraph-3 of the Chapter 11 deals with mode and manner of scrutiny of nomination and specifically provides that the contestant should be given full opportunity to present his defence on any objection raised regarding his nomination, paragraph-5 on the other hand attaches a finality to a rejection of nomination.

Having discussed the statutory provisions relevant for the purpose, I would now turn my attention to the objection filed by the respondent no. 6 to question the nomination of the writ petitioner present at Annexure-6E. A plain reading thereof would show that except charging the writ petitioner of holding the post of Secretary /



Assistant Secretary and that the writ petitioner should have resigned at least three months earlier, there is no allegation present regarding the writ petitioner being a paid employee of the Society. In fact all that the private respondent has prayed in his objection is that the Returning Officer should verify the status of the writ petitioner before accepting his candidature. The objection is dated 20.9.2014 and the rejection of the nomination of the writ petitioner on such objection takes place on the same day i.e. 20.9.2014 vide Annexure- R-6/F whereby the objection has been upheld and the writ petitioner has been held ineligible under paragraph-7(3) of the bye laws of the Society which relates to a paid employee of the Society.

Although it is the case of the petitioner that the rejection took place behind his back but the statement is contradicted by the private respondent while responding to such statement made in para- 12 of the counter affidavit in which it is stated that the rejection took place in his presence.

Be that as it may, the fact remains that even when there is no allegation in the objection petition regarding the petitioner being a paid employee of the Society yet the nomination has been rejected by the Returning Officer relying upon paragraph-7(3) of the bye laws which relates to a paid employee and disqualifies him to contest any election. It is rather unfortunate that although paragraph-3 of the



guidelines present in the Hand Book issued by the State Election Authority casts a duty on the Returning Officer to give sufficient opportunity to a contestant whose nomination is being objected, to present his defence but no such exercise was carried out. In fact considering the nature of the allegation present in the objection, the Returning Officer should not have proceeded to act thereupon and mechanically cancel the nomination of the writ petitioner in such a hurried manner on the same day. But having observed as such, it also bears importance that paragraph-5 of the guidelines read with Rule 21N(6) of the Rules attaches a finality to such decision of rejection of nomination and which could only have been questioned by the aggrieved candidate by way of an election petition but certainly a review or a modification or a petition for recall of such decision was not permissible in law.

To such extent the argument of Dr. Singh supporting the impugned order whereby the prescribed authority has deprecated the review jurisdiction exercised by the Returning Officer, stands supported by the statutory provisions. Neither of the acts in question nor the rules framed thereunder or the guidelines contained in the Hand Book of the State Election Authority vests jurisdiction in a Returning Officer to recall his decision after the scrutiny date fixed in the election programme. The exercise of jurisdiction by the Returning



Officer in recalling his order of rejection of nomination of the writ petitioner is indisputably without lawful sanction. But then the contest and the examination does not stop here for a such exercise was undertaken by the Returning Officer to correct a mistake that had taken place on 20.9.2014 in rejecting the nomination of the writ petitioner and I say so for more reasons than one, namely:

- (a) The name of the writ petitioner appeared in the membership list which was never questioned by the private respondent at any stage;
- (b) The name of the writ petitioner appeared in the voter list and was never questioned by the private respondent before the Returning Officer;
- (c) The two conditions being satisfied, the writ petitioner was eligible to contest the election.
- (d) The nomination of the petitioner to the post of Chairman was questioned by the respondent no. 6 vide Annexure-R6/E only on grounds of holding the post of Secretary / Assistant Secretary with no allegation that he is a paid employee;
- (e) The objection is not accompanied with any evidence that the writ petitioner drew salary from the Society.
- (f) Rule 8(b) of the Rules and paragraph 7(3) of the bye laws disqualifies any person to become a member of a Society only if he is a

paid employee of the Society.

- 
- (g) The petitioner resigned from the post of Secretary on 03.9.2014 i.e. much before the filing of nomination on 18.9.2014 vide Annexure-2 meaning thereby he held no post in the Society.
 - (h) The prescribed authority in the impugned order has referred to a report of the Assistant Registrar dated 13.5.2015 certifying that the petitioner did not hold a salaried post. Meaning thereby the foundation for maintaining the objection against the nomination of the writ petitioner itself stands removed and renders the cancellation of nomination illegal based on nonest grounds.
 - (i) The cancellation of nomination is whimsical, hurried and is apparently without application of mind.

In the circumstances discussed hereinabove, there remains no doubt that the writ petitioner was fully eligible to contest the election and his nomination was incorrectly rejected by the Returning Officer without verification of the facts whether he is a paid employee in the Society. The certification by the Assistant Registrar in his enquiry report dated 13.5.2015 holding that the Manager was not salaried, puts at rest all speculations. Apart therefrom the very fact that the petitioner had already resigned from the post on 03.9.2014

much prior to the filing of nomination coupled with the fact that his name is included in the membership list as well as the voter list of the Society, there remained no disqualification to disentitle the petitioner in contesting the election to the post of Chairman.

Thus whereas the argument of Dr. Singh supporting the view of the prescribed authority on the issue of absence of review power in the Returning Officer is capable of being upheld, the argument of Mr. Thakur that such view of the prescribed authority which gives rise to another illegal order, the prescribed authority ought to have quashed both the review order as well as the nomination rejection order, is based on sound proposition. This Court thus considering the apparent illegality in the order of the Returning Officer passed on 20.9.2014 in rejecting the nomination of the petitioner on nonest grounds is of the opinion that the prescribed authority fell short in his exercise for once the prescribed authority had accepted the report of the Assistant Registrar which supported the claim of the writ petitioner of not being a paid employee then the disqualification charge became nonest rendering the order dated 20.9.2014 of the Returning Officer rejecting the nomination of the petitioner illegal.

Law is well settled on this issue and as rightly argued by Mr. Thakur, where the quashing of one illegal order gave rise to

another illegal order, then both the orders should have been set aside.

Reference is made to some of the judgments on the principle so laid reported in:

- (i) 1977 BBCJ page 549 (D.P. Gupta vs. State) para-7
- (ii) 1990(2) PLJR 616 (Naya Dawakhana vs. State) para-54
- (iii) (2009) 2 SCC 640 (Parents Assn. of Students vs. M.A. Khan) para-18

In result, this Court while upholding view of the Prescribed Authority in quashing the order dated 30.9.2014 of the Returning Officer cum Block Development Officer on jurisdictional infraction would also proceed to hold the rejection of nomination of the writ petitioner illegal and resultantly the order dated 20.9.2014 present at Annexure-R/6E is quashed and set aside. In consequence the finding of the Prescribed Authority present at paragraph-7 of the impugned order becomes unsustainable and is accordingly set aside. The writ petitioner is restored to the post of Chairman, Sagarpur Primary Agriculture Credit Cooperative Society, Block-Pandaul, District-Madhubani. The order passed by the Additional Registrar in Election Case No. 219 of 2014 impugned in this writ petition stands modified to that extent.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--