

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13726 of 2014

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Kumar Manibhushan, Son of Parmeshwar Sahni Resident of Mohalla- Sikandarpur,
P.S.- Town, P.O.- Muzaffarpur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Co- operative Department, Government of Bihar, Patna.
2. The Registrar, Co- Operative Societies, Bihar, Patna.
3. The Bihar State Election Authority through its Chief Election Officer, 32 Harding Road, Patna.
4. Deputy Collector and Land Reforms, Patna Sadar- cum- Election Officer, Bihar Rajya Matasyajivi Sahkari Sangh Limited, Patna.
5. Bihar Rajya Matasyajivi Co-operative Union Limited, Patna, Bihar.
6. The District Co-operative Officer, Patna- cum- Administrator of Bihar Rajya Matasyajivi Co- operative Union Limited, Patna.
7. Executive Magistrate, Patna Sadar-cum- Deputy Election Officer, Bihar Rajya Matasyajivi Sahkari Sangh Limited, Patna.
8. Circle Inspector, Patna Sadar-cum- Deputy Election Officer, Bihar Rajya Matasyajivi Sahkari Sangh Limited, Patna.
9. Sakaldeo Sahni, Son of Birbal Sahni, Resident of Village- Pakri Barkhurda, P.S. Hathori, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V Giri, Sr. Adv.
Mr. Vikas Ratan Bharti, Adv.
Mr. Ashish Giri, Adv.

For the Respondent-State : Mr. Nadeem Seraj, G.P.-20

For the Respondent No. 9 : Mr. Ishwari Singh, Adv.
Mr. Manish Kumar Singh, Adv.

For the B.S.E.A. : Mr. Mukesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-01-2016

Heard Mr. Y.V. Giri, learned Senior Counsel appearing for the petitioner, Mr. Nadeem Seraj, G.P. 20 for the State, Mr. Mukesh Kumar for the State Election Authority and Mr. Ishwari Singh for the private respondent.

The petitioner is aggrieved by the order dated



25.3.2014/28.3.2014 bearing Memo No. 268/RN dated 1.4.2014 passed by the respondent no. 2 i.e. the Registrar, Cooperative Societies in Election Dispute Case No. 79 of 2013 whereby the election petition filed for recount has been dismissed. A copy of such order is placed at Annexure 10. The petitioner also prays for issuance of a writ in the nature of mandamus for recount of the votes cast.

The facts briefly stated is that the petitioner, the respondent no. 9 and one Arun Sahni contested for the post of Chairman, Bihar Rajya Matasyajivi Co-operative Union Limited, Patna. In the vote count, the petitioner as well as respondent no. 9 secured equal number of votes i.e. 21 each which led to a decision by toss in view of the provision underlying Rule 21U(5) of the rules and in which exercise the respondent no. 9 was declared elected. The petitioner filed the election dispute in question giving rise to Election Case No. 79 of 2013 and the Registrar, Co-operative Societies vide order passed on 30.9.2013 accepting the prayer of the petitioner for re-count directed for production of the votes placed in sealed cover. This order passed by the Registrar, Co-operative Societies was questioned by the private respondent in CWJC No. 24573 of 2013. While the writ petition was pending that a second order was passed by the Registrar, Cooperative



Society on 30.9.2013 requiring the Election Officer to produce the votes in sealed cover. The writ Court vide order passed on 12.12.2013 considering the infirmity in the directions so passed by the Registrar, Co-operative Societies directing a re-count by an interim order, was pleased to quash both the orders with a further direction to hear the matter on its merits and to dispose of the same. The copy of the order of the writ Court is placed at Annexure-9 to the writ petition. It is following the order of the writ Court that the matter was heard on merits and by the impugned order the election case has been dismissed. The Registrar, Co-operative Societies not being of the opinion that the issues raised by the petitioner warranted a recount, the petitioner being aggrieved is before this Court.

A preliminary objection was raised by Mr. Ishwari Singh to question the election case itself *inter alia* on grounds of non-joinder of relevant parties in view of the nature of the relief claimed. Mr. Ishwari Singh also informs that appreciating this position the election petitioner has filed a second case bearing no. 80 of 2013 which is yet pending before the prescribed authority. A statement to such effect is also made in Paragraph 34 of the writ petition.

Responding to the preliminary objection as well as on merits it is the argument of Mr. Giri that in view of the stipulations



underlying Section 10(2) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as 'the Act of 2008') it is only where the election petitioner in addition to seeking a relief to declare the result of the returned candidate void also seeks a further declaration regarding himself or any other candidate, that all the contesting candidates have to be arraigned as a party but since no such declaration was claimed by the election petitioner except a prayer for re-count after setting aside the election of the private respondent, hence there is no infirmity in the election case. Mr. Giri, thus submits that election petition in such circumstances was very much maintainable.

Questioning the decision on merits Mr. Giri has relied upon the guidelines issued by the State Election Authority and with reference to Clause 17(1) and (3) of the guidelines present at Annexure- 4 he submits that although the voters were required to put a tick mark (✓) against the name of the candidate to express their intent but two of such votes cast did not bear this mark rather there was merely a straight line against the candidate which did not fulfil the statutory requirement. He submits that if these two votes are taken out from the vote count of the returned candidate the result would draw in favour of the petitioner. He thus submits that since the votes cast was not in tune with the guidelines issued by

the election authority which have a binding character, the refusal by the Registrar, Co-operative Societies to re-count the vote is unsustainable.

The argument of Mr. Giri has been contested by Mr. Nadeem Seraj, learned counsel for the State as well as Mr. Singh representing the returned candidate by referring to Rule 21U of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as 'the Rules') framed under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') and to submit that since there was no confusion as regarding the intention of the voters hence a mere technicality of the absence of tick mark (✓) was not sufficient for a re-count and the prayer has been rightly rejected.

I have heard learned counsel for the parties and I have perused the records.

The election dispute primarily rests on the ground that the tick mark (✓) required to be put under the guideline not having been put on some of the ballot papers, the same required a verification by the prescribed authority by carrying out the recount and not having done so the prescribed authority has abdicated his jurisdiction. It is thus to be seen whether at all the petitioner has made out a case for re-count.

In so far as the issue of maintainability of the election petition is concerned, it is seen from the prayer made in the election petition



present at Annexure-7 that the petitioner has neither questioned the election of the returned candidate nor has made any prayer for setting it aside. The prayer simplicitor is for a re-count. Section 10 of 'the Act of 2008' mandates that the election to any office of a body can only be questioned by way of an election petition. In the present case even though there is a prayer for recount but there is no challenge to the election of the returned candidate. In my opinion a prayer for recount simplicitor in absence of any challenge to the election of the returned candidate is fatal for the maintainability of the election case and thus the election petition was not maintainable on this ground itself.

The illegality does not stop here and while praying for a re-count the petitioner does not choose to arraign the candidates who contested the election. There is no dispute that one Arun Sahni had also contested the post of Chairman and even when the petitioner prays for a re-count of the votes cast which may have given any other result including the result in favour of Arun Sahni, he has not been arraigned as a party. Even on this ground I hold that the election petition was not maintainable.

Adverting to the case on merits, I have noticed the guidelines of the Election Authority placed at Annexure-4 and which requires the elector to put a tick mark (✓) against the name of the candidate



in whose favour he seeks to cast a vote. This guideline cannot be read in isolation as suggested by Mr. Giri rather it has to be read along with the statutory prescriptions underlying Rule 21S as well as 21U of the Bihar Co-operative Societies Rule, 1959 which prescribes the mode and manner of casting the vote. Whereas Rule 21S requires the voter to put a cross (X) mark against the name of the candidate this requirement stands qualified by the statutory provisions of rule 21U(2) which mandates the circumstances in which the ballot paper can be rejected. Rule 21U(2)(iii) further clarifies that only such votes would be rejected which contains no marks. The legal position being such the provision which would justify the opinion expressed by the prescribed authority in not accepting the prayer for a recount is found in the proviso to Rule 21U(3) which provides that a ballot paper shall not be rejected only on the ground that the mark indicating the vote is indistinct or more than once if the intention that the vote has been cast for a particular candidate clearly appears from the way the paper is marked.

That the vote cast by the elector did not contain any other infirmity to warrant a rejection under Rule 21U(2), coupled with the fact that the intent of the voter was clear from the mark put against the candidate he preferred which was far from any confusion, in my opinion the petitioner while making a prayer for recount was simply

indulging in a roving enquiry on vague and frivolous grounds. The election petition in such circumstances was rightly dismissed and I am not persuaded to interfere with the opinion expressed.

The writ petition is accordingly dismissed.

(Jyoti Saran, J)

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