

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7948 of 2015

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Shiv Shankar Mahton, son of Late Dukhan Mahton, resident of village- Paraiwa,
P.O. Bhadaijee, P.S. Bodh Gaya, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Registrar, Co-operative Society, Magadh Division, Gaya.
3. The Election Officer -cum- Block Development Officer, Body Gaya, District-
Gaya.
4. Moratal PACS through its Manager, P.S. Bodh Gaya, District- Gaya.
5. Sri Ram Prasad, Son of Late Sita Prasad Resident of Village- Paraiwa, P.O.
Bhodaijee, P.S. Bodh Gaya, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Jha Mr. Anil Kumar Saxena
For the Respondent/s	:	Mr. K.K. Jha, AAG-14
For the Private Respondern No.5:	:	Mr. Ramakant Sharma, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-02-2016

Heard Mr. Rakesh Kumar Jha, learned counsel
appearing for the petitioner, learned counsel for the State and Mr.
Ramakant Sharma, learned senior counsel appearing for the election
petitioner i.e. respondent no.5.

The petitioner has prayed for a issuance of a writ in the
nature of certiorari for quashing the order dated 4.4.2015/17.4.2015
passed by the Joint Registrar, Cooperative Societies, Magadh
Division, Gaya in Election Dispute No.29 of 2014-15, whereby the
election of the petitioner to the post of Chairman, Moratal Primary
Agriculture Credit Cooperative Society (hereinafter referred to as

the 'Society') has been set aside inter alia on grounds that the petitioner is a defaulter and thus was not eligible to file nomination to contest the election in question.

Mr. Jha, learned counsel appearing on behalf of the petitioner while questioning the impugned order has submitted that there is no dispute that the father of this petitioner was a loanee with the Bank and which loan stands transferred in the name of the petitioner but there is no default in payment of loan nor the Bank has found the petitioner to be in default thereof or there is any order of the prescribed authority under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') holding the petitioner as a defaulter. He submits that on mere ground that the loan taken by the father of the petitioner stands transferred in the name of the petitioner would not *ipso facto* render the petitioner a defaulter so as to disqualify him under rule 23 of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as 'the Rules') and consequently to upset his election.

It is next submitted that the election petitioner i.e. the private respondent was the erstwhile Chairman of 'the Society' and had prepared the list of members to be entered in the voter-list in previous two elections and in none of the voter-list so prepared, the petitioner has been held as such. Learned counsel while referring to



the decision of this Court in CWJC No.10137 of 2015 (Ram Dhyan Yadav vs. The State of Bihar), has submitted that the issue as raised herein stands discussed in the judgment. He further with reference to a decision of this Court in CWJC No.19687 of 2015 (Shafique Alam vs. The State Election Authority) has submitted that the election petitioner himself being author of the voter-list and not raising any objection against the writ petitioner in the voter-list nor there being any remarks of defaulter the election petitioner cannot raise any such plea to question the election of the petitioner.

Although Mr. Sharma, learned senior counsel appearing for the election petitioner has laboured hard to impress upon the Court that the petitioner is a defaulter but in the nature of the dispute raised with the facts eloquent, it would not detain this Court for coming to a conclusion that the Joint Registrar, Cooperative Societies has completely misdirected himself in upsetting the election of the petitioner for until such time there is any order by a competent authority holding a returned member of the 'Society' as defaulter under the provisions of 'the Act', his election cannot be interfered with. This issue stands well discussed in the judgment passed in the case of **Ram Dhyan Prasad** (supra) and which applies to the case in hand on all fours.

For the reasons aforementioned the order impugned

dated 4.4.2015/17.4.2015 passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya in Election Dispute No.29 of 2014-15 cannot be upheld and is accordingly set aside. The petitioner stands restored to his post.

The writ petition is allowed.

(Jyoti Saran, J)

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