

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14383 of 2015

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Md. Harun, Son of Late Shamshul Haque, Resident of Village- Paikauli Narayan,
P.O. - Paikauli Bado, P.S. - Fulwaria, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The Joint Registrar, Cooperative Societies, Saran Division, Chapra.
4. The Block Development Officer, Fulwaria -cum- Returning Officer for the election of Primary Agriculture Credit Cooperative Society, Paikauli Bado, Block - Fulwaria, District - Gopalganj.
5. Gulam Rasool Kaptan, Son of Late Sheikh Mahboob, Resident of Village- Paikauli Narayan, P.O.- Paikauli Bado, P.S. - Fulwaria, District - Gopalganj, presently Chairman of Primary Agriculture Credit Cooperative Society, Paikauli Bado, Block - Fulwaria, District - Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam
For the Respondent/s	:	Mr. Ajeet Kumar, SC-28
For the private Respondent	:	Mr. Rajendra Narayan, Sr. Adv. with Mr. Pritish Ranjan

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-03-2016

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner, learned counsel for the State and Mr. Rajendra Narayan, learned senior counsel appearing for the private respondent.

The petitioner is aggrieved by the order dated 20.7.2015 passed by the Joint Registrar, Cooperative Societies, Saran Division, Chapra in Election Petition No.9 of 2014, whereby the election petition has been dismissed.

Facts of the case briefly stated is that the petitioner and the respondent no.5 contested the election in 2009 to the post of



Chairman of Paikauli Bado Primary Agriculture Credit Cooperative Society, Block Fulwaria in the district of Gopalganj (hereinafter referred to as 'the PACS') in which the petitioner returned. In the next election held in 2014 again the contest between the two for the post of Chairman took place but this time it is the respondent no.5 who returned. The petitioner questioned the election of the respondent no.5 by raising an election dispute giving rise to Election Petition No.9 of 2014 which was dismissed and hence this writ petition.

The limited ground on which the petitioner seeks to question the election of the respondent no.5 is that he is a co-member because he has deposited only the membership fee of Rs.1/- and has not deposited the share money of Rs.10/- hence he was not eligible to contest.

The relevant aspect of the matter is that in each of the two elections it is on the basis of the list forwarded by the Chairman of the 'PACS' i.e. the petitioner himself that the voter-list was prepared and the remarks appearing therein would confirm whether a voter is a Rs.1/- co-member, meaning thereby he was only entitled to vote or is a share-holder of Rs.10/- of the society which would not only entitle him to vote but also to contest the election.

Mr. Manglam while casting serious doubt over receipt produced by the private respondent to support his claim of being



Rs.10/- share-holder in the society bearing No.83147 dated 16.2.2004, has referred to an order of the Returning Officer of Selar PACS which is dated 17.8.2004 and with reference thereto he submits that the nomination of the respondent no.5 was rejected, inter alia, on grounds that the enquiry report reflected that he holds share of Rs.1/- and thus was co-member in the society. It is the argument of Mr. Manglam that this order has attained finality for it was never questioned by the private respondent before any superior forum. The gist of the argument of Mr. Manglam is that the order rejecting nomination of respondent no.5 in context with the society election held in 2004 inter alia on grounds that he was a co-member in the society, any attempt by the respondent no.5 to wriggle out the situation by relying upon a receipt bearing no.83147 dated 16.2.2004 which is though issued prior to the passing of the order by the Returning Officer but was never produced at that time, by itself confirms that it is a manufactured document and could not have been relied upon.

In response to the opinion of the prescribed authority regarding no objection being raised by the writ petitioner on the nomination filed by the private respondent in the election held in 2009 it is submitted by Mr. Manglam that since the writ petitioner returned in the election hence there was no occasion for him to question the nomination of the private respondent on any ground.



Mr. Rajendra Narayan, learned senior counsel appearing for the private respondent while questioning the veracity of the order of the Returning Officer which is the sheet anchor for Mr. Manglam, has referred to the statement of denial by respondent no.5 made in paragraph 10 of his counter affidavit in which it is stated that the respondent no.5 had not filed any nomination in the year 2004.

Since the contest reflected a dispute on facts and reliance was being placed on the order of the Returning Officer present at Annexure-7 which was passed in relation to the election held in 2004 that the State Counsel was requested to produce the records relating to the society election held in 2004 when it is informed by learned counsel that the records are not available. Meaning thereby the veracity of the opinion of the Returning Officer present at Annexure-7 cannot be confirmed and the matter has to be tested on the basis of materials on record.

I have heard learned counsel for the parties and I have perused the records. As I have already observed that the entire contest rests on the fact whether the private respondent is a co-member and thus was not eligible to contest the election or was a Rs.10/- shareholder as manifest from receipt no.83147 dated 16.2.2004 relied upon by him. In my opinion the present case is another addition to the chain of litigation where membership issue



has been translated into an election dispute. It is rather interesting to note that even when the voter-list was prepared on the basis of the list forwarded by the Chairman of the society i.e. the writ petitioner under the provisions of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') read with the provisions of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008') yet he challenges the voter list and secondly despite opportunity being given to Mr. Manglam to demonstrate whether the Chairman while forwarding the list in 2009 and 2014 had made any remark which would reflect that the respondent no.5 was a co-member, nothing has been brought on record. Meaning thereby the respondent no.5 contested the election in 2009 and 2014 without any disqualification remarks. The election petition in such circumstances was rightly rejected and the grounds are more than one, namely:

- (a) The petitioner being a Chairman of the society while forwarding the list to the Returning Officer to prepare the voter-list has not made any remark against the name of the private respondent of being a co-member and thus he cannot turn around to question the eligibility of respondent no.5 to contest the election;
- (b) The document relied upon by the petitioner which is an order of the Returning Officer passed as back as on



17.8.2004 as well as the receipt presented by the respondent no.5 bearing no.83147 dated 16.2.2004 supporting his claim of being full-fledged shareholder of the society holding the share of Rs.10/-, are yet to be tested on their respective veracity and authenticity by a competent forum and until such time that the claim of the election petitioner is upheld and that of respondent no.5 is rejected by a forum competent to do so, the right vested in the private respondent to contest the election cannot be wrested away.

- (c) A membership issue cannot be translated into an election dispute and until such time that there is adjudication on the membership issue of a contesting candidate, it could not be a subject-matter of an election petition. Reference in this regard is made to a judgment of this Court rendered in the case of **Kaushal Kishore vs. The State of Bihar** arising from CWJC No.13060 of 2015; and
- (d) The moment the name of any member of the society appears in a voter-list, it impliedly means that he is a member of the society and unless there is any order disqualifying him as a member or his membership has been cancelled by a competent forum his name cannot

be deleted from the voter-list and if his name cannot be deleted from the voter-list, he is fully eligible to contest the election. Reference in this regard is made to a judgment rendered in the case of **Suray Kali Devi vs. The State of Bihar** arising from CWJC No.17981 of 2014.

For the discussions made above it would not detain this Court any further to hold that the election petition has rightly been rejected by a reasoned order by the prescribed authority which warrants no interference.

The writ petition is dismissed.

(Jyoti Saran, J)

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