

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2557 of 2017

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1. Ganesh Singh, son of Ritlal Singh, resident of Village- Pachpaikar, P.S.- Ujiarpur, District- Samastipur.
 2. Pradeep Kumar, son of Shri Ram Prakash Singh, resident of Village- Pachpaikar, P.S.- Ujiarpur, District- Samastipur.
 3. Ranveer Kumar, son of Ganesh Singh, resident of Village- Pachpaikar, P.S.- Ujiarpur, District- Samastipur.
 4. Shankar Sah, son of Deo Narayan Sah, Baikunthpur Baranda, P.S.- Ujiarpur, District- Samastipur.
 5. Bhola Mahto, son of Ram Autar, resident of Village- Pachpaikar, P.S.- Ujiarpur, District- Samastipur.
 6. Harish Chandra Mahto, son of Jagdish Mahto, resident of Village- Pachpaikar, P.S.- Ujiarpur, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operation, Bihar, Patna.
2. The Principal Secretary, Department of Co-operation, Bihar, Patna.
3. The Registrar, Co-operative Societies, Bihar, Patna.
4. Bihar State Election Authority, through the Chief Election Officer, 32, Hardinge Road, Patna- 800001.
5. The Chief Election Officer, 32, Hardinge Road, Patna- 800001.
6. The District Magistrate, Samastipur-cum-District Election Officer (Co-operatives), Samastipur.
7. The District Co-operative Officer, Samastipur.
8. Assistant Registrar, Co-operative Societies, Dalsingsarai, District- Samastipur.
9. Block Development Officer-cum-Returning Officer, Ujiarpur, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Sanjay Kumar, A.C. to G.A. 13
For the Election Authority	:	Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-02-2017

Heard learned counsel for the petitioners, the State
and the State Election Authority.

The petitioners have moved the Court for a direction
to the respondents to include their names in the voters list prepared
for the election to the post of Chairman of Baikunthpur Barada



Primary Agriculture Society (hereinafter referred to as the 'PACS').

The petitioners are residents of an area which falls under the jurisdiction of the PACS and having a statutory right of membership of one member of a family in the local PACS, along with others, had applied to the Managing Committee of the PACS but no action was taken and thus, they approached the Assistant Registrar, Co-operative Societies, Dalsinghsarai, who under Memo No. 95 dated 27.10.2016 referred the matter to the acting Chairman/Manager/Managing Committee of the PACS for including 561 persons, including the petitioners as members. The same was also not acted upon, due to which the petitioners again move before the Assistant Registrar, Co-operative Societies, Dalsinghsarai, who by order dated 28.11.2016, made the petitioners and other similarly situated persons, members and directed them to deposit the membership fee in the Savings Bank Account of the PACS and for providing photocopies of the same for further action. It appears that the fee was deposited by the petitioners after some time. It would be relevant to indicate here that after the petitioners and other similarly situated persons had initially applied to the Managing Committee for making them members, the Chairman of the PACS had died in harness, resulting in fresh elections announced for the post of Chairman and the Electoral Rolls were required to be prepared for such exercise. The same stipulated that persons who were members



till 30.11.2016 would be enrolled as voters, but because the petitioners did not deposit the membership fee, their names were not included in the final voter list prepared on 25.01.2017, even though they had deposited the fee prior to that.

Learned counsel for the petitioners submitted that when they had applied for membership, which was a statutory right, the Managing Committee had wrongly not granted them membership and most importantly, such application was prior to there being any election contemplated, since the Chairman was alive at that time and the election is only pursuant to him dying in harness. Learned counsel submitted that they were forced to move before the Assistant Registrar, and despite him forwarding their application for membership to the PACS on 27.10.2016, for them to be made members, when no action was taken, the petitioners had to again move before the Assistant Registrar and only then, by order dated 28.11.2016, they were made member. Learned counsel submitted that the request for membership was not in view of the elections but prior to the vacancy even arising. Learned counsel further submitted that though the cut-off-date for being enrolled as voters was 30.11.2016, but the voter list is prepared of members and the petitioners were made member by the order of the Assistant Registrar on 28.11.2016 itself, and thus, only a formality was required of depositing membership fee, which was Rs. 1/- and further Rs. 10/-, if a person



wanted to be eligible to contest the election for the Managing Committee. Learned counsel submitted that in view of the aforesaid, had the request been initially entertained by the Managing Committee itself, and even later on as per the direction of the Assistant Registrar dated 27.10.2016, the petitioners would have deposited the money much in advance and this controversy would not have arisen, but in the present case, they being made members in the manner described above, they cannot be prevented from becoming voters as there was no fault or laches on their part for any delay which may have been caused, over which they had no control. Learned counsel for the petitioners has produced web copies of the orders dated 26.09.2014 and 16.10.2014 passed by a Division Bench of this Court in **C.W.J.C. No. 17086 of 2014 (Shailesh Kumar Sharma vs. The State of Bihar & Ors.)**, by which a direction has been given to include the name of the writ petitioner in the voter list on the ground that the delay in making him a member was not on his part but due to inaction on the part of the members of the Managing Committee of the PACS.

Learned counsel for the State Election Authority submitted that as per the notification, the petitioners not having deposited their membership fee by 30.11.2016, rightly their name has not been included in the voter list.

Having considered the facts and circumstances of the



case and submissions of learned counsel for the parties, the Court finds that the petitioners cannot be made to suffer due to the inaction or wrong action on the part of the Managing Committee of the PACS. The petitioners had initially applied, even prior to there being any contemplation of any election, and later on even the direction of the Assistant Registrar to the Managing Committee dated 27.10.2016, not having been acted upon for more than a month, they were made members by the order of the Assistant Registrar himself by order dated 28.11.2016, and thus, to expect that within two days, the order would have been communicated to them and they would also have deposited the money, is not reasonable. Moreover, only as per the notification issued under Memo No. 757 dated 06.12.2016, by which the cut-off-date was fixed as 30.11.2016, the petitioners could not have been aware of such a date, which was made with retrospective effect, so as to have ensured that they deposited the money prior to 30.11.2016. Once an order in their favour making them members is passed, if not deliberate laches are found on the part of the petitioners, under normal circumstances, they should not be made to suffer. In the present case, on the one hand, the authorities may also not be at fault, as it has proceeded in general terms and may not have been aware of the situation prevailing especially, with regard to the petitioners, but equally true, on the other hand, is the fact that the petitioners had been made members on 28.11.2016 itself and they



were not aware that 30.11.2016 would be made the last cut-off-date for being members, and that too by a notification which was issued on 06.12.2016. In this contest, the decision relied upon by learned counsel for the petitioners, in the case of **Shailesh Kumar Sharma** (supra), which is more or less in similar circumstances, clearly supports the contention of the petitioners before this court in the present writ application.

For the reasons aforesaid, the Returning Officer (respondent no. 9) is directed to include the names of the petitioners in the voters list, as they after having already deposited their membership fee and having become members prior to the publication of the final voters list on 25.01.2017, if otherwise not disqualified, for the purposes of election to be held for the post of Chairman of the PACS scheduled for 06.03.2017. Learned counsel for the State Election Commission and the State shall inform the respondent no. 9 today itself, with regard to the compliance of the present order.

The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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