

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9546 of 2017

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1. Jamalpur Fisherman Co-operative Societies Ltd. having its office at Khalasi Mohallah Jamalpur, District- Munger through its Secretary Smt. Lalita Devi.
 2. Smt. Lalita Devi, wife of Shri Brahmdeo Mahto, at present Secretary of the Jamalpur Fisherman Co-operative Societies Ltd.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operative Societies, Bihar, Patna.
2. Bihar State Election Authority, 32, Harding Road, Patna through its Election Officer.
3. Registrar, Co-operative Societies, Bihar, Patna.
4. District Co-operative Officer, Munger.
5. Block Development Officer-cum-Election Officer (FCS), Jamalpur, District- Munger.

..... Respondents 1st Party

6. Dharhara Prakhanda Matsyajeevi Sahyog Samiti Ltd., Dharhara, District Munger having its Office at Dharhara, District- Munger through its Secretary Pratap Narayan Chaudhary, Son of Late Ramanand Chaudhary, resident of Village- Barham, P.S.- Naya Ram Nagar, District- Munger.

.... Respondent 2nd Party

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Advocate
For the State	:	Mr. P. N. Shahi, A.A.G. 6
		Mr. Dinesh Maharaj, A.C. to A.A.G. 11
For the Respondent No. 6	:	Ms. M. Chatterjee, Advocate
		Mr. Ram Niwas Prasad, Advocate
For the Election Authority	:	Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 04-10-2017

Heard learned counsel for the petitioners, Mr. P. N.

Shahi, learned A.A.G. 6 along with learned A.C. to A.A.G. 11 for the

State and learned counsel for the respondent no. 6.

2. The petitioners have moved before the Court for
the following reliefs:

“i) An appropriate writ, order or direction



quashing the ex-parte order of the respondent-D.C.O. dated 18.05.2017 as contained in Annexure-6, be issued.

ii) An appropriate writ, order or direction quashing the follow up action (Annexure-6) and/or inclusion of 495 persons in the voter list of the petitioner no. 1, be issued.

iii) An appropriate writ, order or direction commanding the Election Officer (respondent no. 5) from allowing newly included 495 persons in the ensuing election in the year 2017 until determination of their right as a member by the competent authority, be issued”.

3. However, subsequent to the same, the election to the Society in question has been held in which the petitioner no. 2 also contested for the post of Chairman and lost.

4. The issue which filters is whether the respondent no. 6 Society can take a decision with regard to transferring 495 persons who were members of that Society to the petitioner no. 1 Society in the year 2017 which was upheld by the District Co-operative Officer, Munger and further as to whether their names can be included in the voter list of the petitioner no. 1 Society and they can be allowed to vote as members.

5. Learned counsel for the petitioner submitted that in terms of amendment inserting Section 11B to The Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the ‘Act’) brought in the year 2010, there had to be reorganization of various



Societies in the terms of the amended provisions and one of the features was that persons were required to be resident within the area of operation of the concerned Society and further that in one Block there was to be one Co-operative Society for which the existing Societies were to be amalgamated. Learned counsel submitted that in terms thereof, the State had given certain directions in various circulars regarding Memo No. 4217 dated 30.07.2010 as well as Memo No. 3944 dated 24.08.2011 with regard to the procedure to be adopted for such amalgamation. Learned counsel submitted that whatever was required to be done was done thereafter and finally in the year 2012 when elections were held, the concerned Societies had submitted a list of the members who were also included in the voter list and election held. Learned counsel submitted that the 495 persons who have now been directed to be included in the voter list of the petitioner no. 1 Society were till 2017 shown as members of respondent no. 6 Society and thus their shifting from the respondent no. 6 Society to the petitioner no. 1 Society can only be done in accordance with the provisions of the Act, which has not been done. Learned counsel submitted that the respondent no. 6 taking a decision to transfer those 495 members along with their share money to the petitioner no. 1 Society is totally without jurisdiction as there is no such provision, either in the Act or the Bihar Co-operative



Societies Rules, 1959 (hereinafter referred to as the 'Rules') or the Bye laws of the Societies. Learned counsel submitted that the decision of the respondent no. 4 dated 18.05.2017 is equally erroneous for the reason that it has relied upon the circulars of the State Government to decide the issue even though the said circulars were only limited to the exercise when the amendment was brought about in the Act and once the exercise had been completed, the force of the circulars automatically ended and if there remained any dispute, it had to be brought before the Registrar under Section 48 of the Act, moreso, when in the intervening period, election was held in the year 2012 based on the voter list of members which was prepared after the amendment brought under the Act in the year 2010 and after the authorities having complied with the directions of the State Government contained in the aforesaid two circulars dated 30.07.2010 and 24.08.2011.

6. Learned counsel for the respondent no. 8 raised a preliminary objection and submitted that the petitioner no. 2 having contested the election and lost, cannot now challenge the voter list of such election and further that a Division Bench of this Court in the case of **Bibha Devi vs. State Election Commission (Panchayat)** reported in **2017 (1) PLJR 225** has held that once election is held, the only remedy available is to file election petition under the



provisions of the Act and writ petition was not maintainable. However, on merits, it was submitted that the exercise which was required to be done with regard to reorganization of the Society was not properly done and thus the authorities have rightly corrected the mistake. It was further submitted that as far as the factual aspect is concerned, the contention of the petitioner that 495 members were fake is falsified by the fact that in the year 2012 they were shown as voters of the respondent no. 6 Society, which has also come during the enquiry. However, this aspect is contested by learned counsel for the petitioner who submitted that in the year 2012 the voter list of the respondent no. 6 Society showed only 236 members out of which only about 100 odd persons among the disputed 495 persons, were present.

7. Mr. P. N. Shahi, learned A.A.G. 6 submitted that the authorities have passed the order to include the 495 persons in the voter list of petitioner no. 1 Society under the impression that the requirement of the amendment brought in the Act by Section 11B was not properly implemented in terms of the directions of the State Government contained in the aforesaid letters dated 30.07.2010 and 24.08.2011. However, he was not in a position to defend as to how the said directions of the State Government relating to the exercise in terms of Section 11B of the Act could be again gone into in the year



2017, when the said exercise was already deemed to be completed in the year 2011, which was also followed by election in the year 2012 after such amalgamation and preparation of fresh/new voter list in terms of Section 11B of the Act.

8. At this juncture, on a query of the Court to learned counsel for respondent no. 6 that if stand taken by the respondent no. 6 Society is so correct and *bona fide*, how those 495 persons were allowed to remain as members of the respondent no. 6 Society till 2017 and further how they were included in the voter list of the respondent no. 6 Society when the elections were held in the year 2012, there was no reply forthcoming.

9. In the aforesaid background, the Court is unable to uphold the preliminary objection of learned counsel for respondent no. 6 with regard to maintainability of the writ petition. The writ petitioner had affirmed the affidavit in the present case and the same was also filed in the Registry of the Court on 07.07.2017 i.e., prior to the election of the petitioner no. 1 Society being held. Thus, the *lis* has as to relate to the time when the writ petition was filed, that is, 07.07.2017 and any subsequent development which is consequential shall be covered by the principle of *lis pendence* and the petitioners cannot be made responsible or allowed to suffer adverse consequences thereof. Moreover, the judgment relied upon by



learned counsel for the respondent no. 6 in the case of **Bibha Devi** (supra), the foundational fact was different, inasmuch as, the said person had moved the Court after having contested the election and loosing the same, whereas in the present case, the petitioners have moved the Court prior to even the election being held. Thus, the principle laid down in the case of **Bibha Devi** (supra) cannot be read as a straight jacket and made applicable to the present case, where the foundational facts are different.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that including the 495 members of the respondent no. 6 Society in the voter list of the petitioner no. 1 Society is illegal. The matter has to be looked into with reference to the provisions made in the Act in the year 2010 when amendment was brought in the Act by which Section 11B was inserted, which required all Co-operative Societies existing in a Block to be amalgamated into one Society and the membership was to be restricted to persons who reside in the geographical boundary of the concerned Block. For complying with the same, directions were issued by the State Government in the aforesaid two letters dated 30.07.2010 and 24.08.2011. The said exercise is thus, deemed to have been undertaken after complying with the said directions and only thereafter, in the year 2012,



elections were held for the Societies in general, including the petitioner no. 1 Society and the respondent no. 6 Society. At that time, on the basis of the list submitted by the then existing Managing Committee of the concerned Societies, the voter lists were prepared and election held. The admitted position is that many persons out of the said 495 persons were in the year 2012 included in the voter list of the respondent no. 6 Society and were also permitted to take part in the election and cast vote, and no controversy was ever raised by the respondent no. 6 Society at the relevant time in the year 2012 with regard to such persons, which is a substantial number. This being the position in the year 2017, there cannot be a sudden pang of conscience in the respondent no. 6 Society which would permit, purportedly under the garb of correcting a perceived mistake, by unilaterally taking a decision to transfer the membership, along with the membership fee, of the said 495 persons to the petitioner no. 1 Society. This type of resolution is both surprising and completely beyond the provisions of either the Act or the Rules or the Bye laws.

11. The Managing Committee of the respondent no. 6 Society could only take a decision that the said 495 persons not being residents of its geographical area were not entitled to remain as members and could then remove them. However, their membership could not have been forced upon the petitioner no. 1 Society as it is



in the exclusive domain of the petitioner no. 1 Society to consider the application of any person for making him or her a member of the Society. Further, the decision of the District Co-operative Officer holding that those 495 persons were required to be members of the petitioner no. 1 Society as per the 2010 amendment and Section 11 B of the Act, is equally bad for the reason that the said proceeding was not at the instance of any of the 495 members raising a grievance that despite them having applied for membership of the petitioner no. 1 Society, the same had not been accepted. Thus, when there was no *lis* to this effect, the District Co-operative Officer could not have decided the issue. The issue could only be decided upon the aggrieved persons either individually or collectively moving before the Registrar, Co-operative Societies under Section 48 of the Act for a direction for being made member of the petitioner no. 1 Society and thereafter consequences could have followed, including their names being added in the voter list of the petitioner no. 1 Society. The same could not have been done through a via media by a procedure which has been adopted in the present case where the respondent no. 6 Society first takes an unknown course of taking a resolution of transferring 495 persons to the petitioner no. 1 Society and thereafter the District Co-operative Officer upholding the same by going back in time to the year 2010 and then relying on the



circulars issued by the State Government dated 30.07.2010 and 24.08.2011 for the reason that the same had lost their efficacy and force once the exercise stood completed by holding fresh election under the voter list of the year 2012. However, the view of the Court may not be misunderstood to imply that the said 495 persons are now remediless. They have the remedy which is under the provisions of the Act and it was incumbent upon them to move before the appropriate authority under the Act for redressal of their grievances of either being included or considered as members of the petitioner no. 1 Society, but not otherwise. Thus, the manner in which the 495 persons have not only been held deemed to be members of petitioner no. 1 Society but also allowed to take part in the election by their names being included in the voter list of petitioner no. 1 Society, is totally arbitrary and clearly illegal.

12. The Court, by an earlier order, had directed the State authorities to inform the Court as to how many persons from the two separate blocks i.e., 222 and 495 actually casted their vote, and the information brought on record by way of an affidavit is that out of the 222 members, who were among the list forwarded by the petitioner no. 1 Society, 149 had casted their vote and out of the 495 persons, who were included in the voter list as per the impugned resolution of the respondent no. 6 Society and the order of the



District Co-operative Officer, 322 had voted. The margin of difference between the petitioner no. 2 and the winning candidate in the election held on 11th July, 2017 was 223 i.e., the petitioner no. 2 received 88 valid votes whereas 311 was polled by her rival. In such view of the matter, the winning margin being only 223 and 322 persons from among the 495 disputed persons having voted, clearly the election itself stands vitiated on this account also.

13. In view of the discussions made hereinabove, the writ petition stands allowed. Both, the resolution of the respondent no. 6 Society transferring the concerned 495 members to the petitioner no. 1 Society as well as the subsequent order upholding the same by the District Co-operative Officer, Munger, are set aside. Any action pursuant to the aforesaid resolution/order by which 495 persons were included in the voter list of the petitioner no. 1 Society as well as the election held of the said Society stands vitiated and is also set aside. This is also in tune with the settled principle in law that once the base goes the super structure that is, all subsequent and consequential actions/orders have to go also. Furthermore, the issue relating to wrong preparation of voter list cannot be the subject matter of an election dispute case.

14. The State Election Authority shall now ensure that fresh elections are held in terms of fresh voter list prepared for



the petitioner no. 1 Society, in accordance with law and the statutory provisions and the order passed in the present case.

(Ahsanuddin Amanullah, J.)

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