

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10045 of 2017

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1. Bihar Rajya Sahkarita Vikash Samanway Samiti, Patna (Bihar) having its office at G-1, Kanti Palace, Shashtri Nagar, Bailey Road, Patna- 800027, through its Patron, Shri Gopal Giri, S/o Late Ram Nath Giri, R/o Flat No- 303, Amar Villa Apartment, Road No-1, New Patliputra Colony, P.S.- Patliputra, District- Patna.
 2. Marhowrah Vyapar Mandal Sahyog Samiti Ltd, Marhowrah in the district of Saran, through its Chairman, Wakil Pd Yadav.
 3. Wakil Prasad Yadav, Son of Late Ram Pravesh Singh Yadav, R/o Vill- Tejpurwa, P.S.- Marhowrah, District- Saran, Chairman of Marhowrah Vyapar Mandal Sahyog Samiti Ltd, Marhowrah, District- Saran.
 4. Mohiuddin Nagar Vyapar Mandal Sahyog Samiti Ltd, Mohiuddin Nagar in the District of Samastipur through its Chairamn, Ram Kalewar Pd. Singh.
 5. Ram Kalewar Prasad Singh, Son of Late Ram Yatan Singh, R/o Mohalla- Anugrah Nagar, Mohiuddin Nagar, District- Samastipur, Chairman of Mohiuddin Nagar Vyapar Mandal Sahyog Samiti Ltd., Mohiuddin Nagar, in the District of Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary, Government of Bihar, Patna.
2. Finance Commissioner, Bihar, Patna.
3. The Principal Secretary, Co-operative Department, Govt. of Bihar, Patna.
4. The Registrar, Co-operative Societies, Bihar, Patna.
5. The Bihar State Election Authority through its Secretary, having its office at 32, Harding Road, Patna.
6. The Chief Election Officer, Bihar State Election Authority having its office at 3, Harding Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate with Mr. Ishwari Singh, Mr. S. K. Mishra and Mrs. Kiran Kumari, Advocates
For the State	:	Mr. Sushil Kumar, GP 22
For the State Election Authority	:	Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH



ORAL JUDGMENT

Date: 25-07-2017

Heard learned counsel for the petitioners, State and the Bihar State Election Authority (hereinafter referred to as the 'Authority').

2. The petitioners have moved the Court for a direction to the respondents not to charge expenses for conducting the election of Co-operative Societies.

3. Learned counsel for the petitioners submitted that holding of election is a duty cast upon the State, especially in view of the amendment brought in the Constitution of India by which Part IX-B has been added giving the Co-operative Societies constitutional status. Learned counsel submitted that when the amendment was brought in the Constitution recognizing the Local Self Bodies and election to such Local Self Bodies i.e., Municipalities, Zila Parishad, Gram Panchayats etc. is done without there being any fee charged, the election to Co-operative Societies should also be free of cost as it is the obligation of the State to hold such election. Learned counsel further submitted that the Bihar State Election Authority has been created under the Bihar State Election Authority Act, 2008 and the same does not confer power to charge any fee for holding elections. Learned counsel submitted that such power not being vested in the Authority, charging of fee is impermissible in law. Learned counsel



further submitted that there is also violation of Article 14 of the Constitution of India, inasmuch as the election of Fishermen Co-operative Societies has been made free of cost but with regard to election of the petitioners' Societies i.e., *Vyapar Mandals*, a fee is being charged, which is discriminatory. Learned counsel submitted that there is also discrimination by the State when it has undertaken to pay the expenses of the Authority for holding election to Fishermen Cooperative Societies whereas in the case of petitioners' Societies it is being charged on the Societies.

4. Learned counsel for the Authority submitted that Rule 7 of the Bihar State Election Authority Rules, 2008 clearly provides that for the purpose of conducting of election or elections in an institution or establishment or organization or group of such bodies, the Authority shall take necessary action under the appropriate Act/Rules in force for such institution or establishment or organization or other bodies and for such purpose the Authority shall have powers to make arrangements by way of making regulation or/and regulations and/or by issuing executive instructions. Learned counsel submitted that by way of amendment in the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'), in the year 2012 Section 14 A (1) was substituted and stipulates that notwithstanding anything contained in any provision of the Act, rules made thereunder and byelaws of a registered society, the election to



the Managing Committee of Co-operative Societies registered under the Act shall be conducted by the Bihar State Election Authority constituted under the Bihar State Election Authority Act, 2008 in the manner prescribed for the conduct of election under the Bihar State Election Authority Act, 2008 and rules made thereunder read with Bihar Co-operative Societies Act, 1935 and rules made thereunder. It was submitted that in terms of rules made under the Act which is the Bihar Co-operative Societies Rules, 1959, Rule 21- V(i) of the same provides that the amount of expenses for holding election in a cooperative society or a class or classes of cooperative society shall be determined by the Conducting Officer by special or general order and the same shall be payable by the society from its fund. Learned counsel submitted that in view of the aforesaid, the Authority has the power under the Statute to charge fee which has also been done in all previous elections.

5. Learned counsel for the State adopts the arguments of learned counsel for the Authority.

6. Having considered the rival contentions, the Court does not find any merit in the preset writ petition.

7. The comparison of holding elections to a Co-operative Society with that of holding election to Legislative Bodies or Local Self Bodies is erroneous. The election to such bodies comprises of the entire population of such area for which the bodies are constituted and



they are part of the system of self governance. However, with regard to Co-operative Societies, their bodies comprise of specified and limited members and their objective is also for pursuing a special vocation and working in a particular field. Thus, such bodies do not have any governance powers and their voters do not comprise of the entire population of the area in which they operate. Moreover, as has rightly been pointed out by learned counsel for the Authority, it has the power under Rule 21-V (i) of the Bihar Co-operative Societies Rules, 1959 to determine the amount of expenses which shall be payable by the Society from its funds. The same stands incorporated in view of the amended Section 14 A(1) of the Act. The same having been exercised cannot be faulted in law. Further, the question with regard to there being discrimination in charging of fee from various cooperative societies, the same is also permissible in terms of the aforesaid Rule 21-V(i) of the Bihar Cooperative Societies Rules, 1959 which provides that the amount of expenses for holding election in a co-operative society or a class or classes of co-operative society shall be determined by special or general order which is payable by the society from its fund. This clearly confers the power to fix separate amount for separate classes of cooperative societies and the law does not mandate a uniform amount from all societies. As far as the contention of learned counsel for the petitioners that there is discrimination by the State in bearing the cost of election to



Fishermen Cooperative Societies and not for the petitioners’ Societies, the Court does not find substance in the same for the reason that the petitioners, being *Vyapar Mandals*, are commercial bodies whereas the Fishermen Cooperative Societies have been constituted for the welfare and source of livelihood for people belonging to a particular backward and underprivileged section of the Society and thus, even the Constitution of India giving power to the State to come up with special schemes for the underprivileged sections of the Society, such action of the State does not suffer from any illegality/infirmity.

8. In view of the discussions made hereinabove, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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