

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13264 of 2017

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Amarjeet Kumar, Son of Late Krishna Kumar Azad, resident of Village- Barauni-3, Post- Barauni Devadhi, Police Station- Teghara, District- Begusarai.

.... Petitioner/s

Versus

1. The Bihar State Election Authority through its Secretary, 32, Harding Road, Patna- 800001.
2. The State of Bihar through the Registrar, Cooperative Societies, Govt. of Bihar, Patna.
3. The District Magistrate Cum District Retuning Officer (Cooperative Societies), Begusarai.
4. The Sub-Divisional Officer, Sadar, District- Begusarai.
5. The District Cooperative Officer, Begusarai.
6. The Block Development Officer- cum-Retuning Officer, Teghara, District- Begusarai.
7. The Block Development Officer-cum-Retuning Officer, Barauni, District- Begusarai.
8. The Barauni Cooperative Cold Storage Limited through its Manager, Barauni, District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Vijay Vatsyayan, Advocate
For the State	: Mr. Krishna Kumar Singh, AC to GP-22
For the State Election Authority	: Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioner; State and State
Election Authority.

2. The petitioner has moved the Court for the following
reliefs:

“(i) For issuance of an order, direction or writ in the nature of Certiorari quashing the amended election schedule dated 25.08.2017 issued by the respondent no. 7 for the purposes of holding the election of the Barauni Cooperative Cold Storage Limited.



(ii) For issuance of an appropriate declaration that the respondent no. 7 has no jurisdiction to abolish any post of the managing committee of any cooperative society as enumerated/indicated in its bye-laws.

(iii) For issuance of an order, direction or writ in the nature of Mandamus commanding the respondent authorities to issue a fresh election schedule of all the posts as enumerated in the bye-laws of the cooperative society in question.

(iv) For granting any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.”

3. In sum and substance, the contention is that the respondent no. 7 has notified the schedule for election of the respondent no. 8 Society but has simultaneously and *suo motu* abolished the post of Treasurer and instead has added the post of a General Member of the Managing Committee.

4. Learned counsel for the petitioner submitted that such act is totally beyond jurisdiction for the reason that the Returning Officer is only to conduct the election of the post which already stood at the time of issuance of the notification. It was submitted that the jurisdiction and power with regard to the creating and abolishing posts rests with the Managing Committee of the Society, which has then to be duly incorporated in the bye-laws. Learned counsel further submitted that the impugned decision of the respondent no. 7 was without any application or complaint to such effect, either by the Society itself or by any of the members.



5. Learned counsel for the State and State Election Commission do no dispute the stand taken by learned counsel for the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the impugned order cannot be sustained. The decision of the respondent no. 7 to replace the post of Treasurer with that of a member of the Managing Committee is totally beyond jurisdiction.

7. At this stage, learned counsel for the petitioner submitted that after he had served a copy of the writ petition on learned counsel for the State on 6th September, 2017, by *ante* dating, the respondent no. 7 has pasted an order on 7th September, 2017, modifying the impugned order to the extent that one post was re-designated as Treasurer, but in effect, the exercise was to frustrate any person, especially the petitioner to file nomination for the said post for the reason that the last date for nomination was 8th September, 2017.

8. Having regard to the aforesaid, and in view of the uncertainty and confusion created by the impugned order and the subsequent act of modifying the order by the respondent no. 7 himself, leading to a situation where effectively it may not be practical for persons to fill their nomination paper, the Court deems it



appropriate that the election scheduled for 15th September, 2017 be postponed for a later date. All nomination papers already filled shall be valid for the subsequent election, the dates for which shall be announced by the State Election Authority. Further, the date of filing the nomination shall also be extended by the State Election Authority so that persons eligible may get reasonable opportunity for filling up the nomination paper.

10. It goes without saying that this order is restricted with regard to the respondent no. 8 Society only.

11. The writ petition stands disposed off in the aforementioned terms.

12. Learned counsel for the State and State Election Commission shall communicate the order to the authorities concerned.

(Ahsanuddin Amanullah, J)

P. Kumar

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