

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13906 of 2017

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1. Suresh Prasad son of Late Ram Prasad Sah Resident of Village Sri Rampur, P.S. Raxaul, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies New Secretariat, Patna.
3. The Bihar State Election Authority, 32, Harding Road, Patna - 1 through the Chief Election Officer.
4. The Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna - 1.
5. The Block Development Officer-cum-Election Officer, Raxaul Prakhanda Matsyajivi Sahyog Samiti Ltd. Raxaul, P.S. - Raxaul, District - East Champaran.
6. The District Co-operative Officer, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sandip Kumar, Adv.
For the Respondent/s	:	Mr. M.K.Ambastha-SC-26
		Mr. Tripurari Nath Ambastha, A.C. to SC-26
For Respondent No.7	:	Mr. Deepak Kumar, Adv.
For Election Authority	:	Mr. Mukesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-12-2017

Heard learned counsel for the petitioner, learned counsel

for the State and learned counsel for the respondent no.7.

2. the petitioner has filed the present writ petition for the following reliefs :-

- I. For issuance of writ in the nature of certiorari be issued quashing the order dated 24.08.2017 issued vide Memo No.767 dated 24.08.2017 as contained in Annexure-13 passed by the Respondent No.3 and 4 by which the complaint



filed by the petitioner has been rejected.

- II. For issuance of writ in the nature of mandamus directing the respondents particularly the Respondent no.3 and 4 to include the names of 1650 members of Raxaul Prakhand Matsyajivi Sahyog Samiti Ltd., Raxaul in the voter list whose names were illegally deleted after having been added in the Voter list after accepting their objection filed in Prapatra No.3 within time during the election of 2012.
- III. For issuance of writ in the nature of mandamus directing the Respondent No.5 the Block Development Officer, to conduct the election of Raxaul Prakhand Matsyajivi Sahyog Samiti Ltd. Raxaul after addition of 1650 members whose names were illegally deleted after having been added in the Voter list in the year 2012.
- IV. For any other consequential relief/reliefs for which the petitioner is entitled by this Hon'ble Court in the facts and circumstances of the present case.

3. It is submitted by the learned counsel for the petitioner that the petitioner filed an application on 20.03.2017 before the Bihar State Election Authority for inclusion of names of 1650 members of the Society in the voter list as per direction and observation dated 18.02.2016 passed in C.W.J.C. No. 2840 of 2016 whereby this Court



had observed that the petitioner would be at liberty to take recourse to the remedy available under the Act and the Rules, which shall be considered and disposed of in accordance with law by the appropriate statutory authority. Thereafter, the State Election Authority vide its letter dated 21.03.2017 directed the Block Development Officer-cum-Election Officer to consider the application submitted by the petitioner on 20.03.2017 in accordance with law. The request made by the petitioner for inclusion of names of 1650 members was finally rejected by the Chief Election Officer, Bihar State Election Authority, vide order dated 24.08.2017 and, thereafter, final voter list was published by the respondent no.5 without including the names of 1650 members, who were earlier included and deleted by the then Block Development Officer in 2012.

4. It has been submitted that non-inclusion of 1650 members in the voter list and rejecting their claim by order dated 24.08.2017 is illegal and on non est ground.

5. On the other hand, learned counsel for the State and learned counsel for the Respondent no.7 have raised a preliminary objection regarding maintainability of the writ petition with reference to Sections 10 and 11 of the Bihar State Election Authority Act, 2008 (for short 'the Act'). They submitted that once the process of election has been set in motion, interference in a writ petition cannot be made



in view of the law laid down by the Supreme Court in *Shyamdeo Prasad Singh Vs. Nawal Kishore Yadav [(2000) 8 SCC 46]; Mohinder Singh Gill Vs, Chief Election Commissioner [AIR 1978 SC 851]* and in view of the law laid down by a Division Bench of this Court in *Raju Prasad Mehta Vs. The State of Bihar & Ors. [2017(2) PLJR 970]*. He submitted that since the notification for holding election of Raxaul Prakhand Matsyajivi Sahyog Samiti Ltd. was published on 1st September, 2017, the writ petition is fit to be dismissed.

6. In reply, learned counsel appearing for the petitioner submitted that this Court vide order dated 17.10.2017 has already directed that the election for the Raxaul Prakhand Matsyajivi Sahyog Samiti Ltd. Shall not be held until further orders of the Court and, hence, merely notification made on 1st September, 2017 for holding election cannot be said to be a ground for holding the writ petition as not maintainable.

7. I have heard learned counsel for the parties and perused the record.

8. Sections 10 and 11 of the Act read as under :-

“10. Election Petition.— (1) (i) The election to any office of a body shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of body is under dispute, the election petition shall lie before such authority as is prescribed under the Act



or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before such Authority, which the State Government may prescribe by issuance of notification.

(2) Parties to the petition.— A petitioner shall join as a respondent to this petition-

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) Any other candidate against whom allegations of any corrupt practice are made in the petitioner.

11. Bar to interference by Courts in electoral matters.— Notwithstanding anything contained in this Act-

(a) The validity of any order relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made shall not be called in question in any court;

(b) No election to any body shall be called in question except by an election petition presented to the Prescribed Authority under this Act.”

9. A perusal of the aforesaid Sections 10 and 11 of the Act would make it manifest that they provide for mechanism and procedure for holding election and resolving the disputes arising out of elections to various Managing Committees in co-operative societies. It is not in dispute that the election for the Raxaul Prakhand Matsyajivi Sahyog Samiti Ltd. has already been notified on 1st September, 2017. It appears that when the order dated 17.10.2017



was passed, this Court was not aware of the fact of such notification and, hence, it had directed for not holding the election until further orders of the Court.

10. The submission made by the learned counsel appearing for the Respondent No.7 and the State carries force. It is well settled that once the process of election has been set in motion, interference in a writ petition is normally not made. The Division Bench of this Court in *Raju Prasad Mehta* (Supra) recently held that once the election process has already commenced, any indulgence into the matter in the writ petition is not permissible. Nature of dispute raised by the petitioner in the present application, in my view, can be raised in a properly framed election petition under the Act and cannot be adjudicated upon in a proceeding under Article 226 of the Constitution of India.

11. This application is, accordingly, dismissed.

12. The interim order dated 17.10.2017 stands vacated.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14-12-2017
Transmission Date	14-12-2017

