

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12921 of 2017

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Vijendra Dhari Sharma, Son of Late Ram Kewal Singh, Resident of Village- Bagha Kol, P.O. Patut, P.S. Bikram, District- Patna, presently Adhyaksh Bikram Vyapar Mandal, Block- Bikram, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate-cum- District Election Officer (Cooperative), Patna, District- Patna.
2. The District Cooperative Officer, Patna, District- Patna.
3. The Cooperative Extension Officer, Bikram, District- Patna.
4. The Block Development Officer, Bikram-cum- Returning Officer, Bikram Vyapar Madal, 2017, District- Patna.
5. The State Election Authority, Bihar, Patna through the Secretary.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 31-10-2017

Heard Mr. S. B. K. Mangalam, learned counsel for the petitioner, learned AC to SC-26 for the State and Mr. Mukesh Kumar, learned counsel for the State Election Authority.

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

(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 10.08.2017 issued by the Respondent no. 2 and contained in her letter no. 2215 dated 10.08.2017, whereby and where under the Respondent no. 2 has directed the Respondent no. 4 to include the name of 67 electors in the voter list prepared for holding Bikram Vyapar Mandal Election, 2017 after taking individual affidavit from the electors as verification of the receipt is not possible.



(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent No. 4 to produce on record the letter nos. 661, 662 and 663 dated 09.08.2017 issued by the Respondent no. 4 which has been replied by the Respondent no. 2 vide her letter no. 2215 dated 10.08.2017 and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI on the ground that any list of elector for addition of name in the voter list of 2017 had come to Respondent no. 4 from any other source and not through the office bearers of the Vyapar Mandal in question, he could have made any such recommendation to the Respondent no. 2 only after consulting the office bearers of Vyapar Mandal or not at all.

(III) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the supplementary voter list dated 10.08.2017 of 67 electors prepared by the Respondent no. 4 for inclusion of their name in the final voter list on the ground that even after the direction of the Respondent no. 2, the Respondent no. 4 is not competent to include the name of electors in the final voter list in respect of whom there is no decision of the Managing Committee of the Society.

(IV) For a declaration that when the State Election Authority had categorically directed that voter list prepared for holding 2012 Election of the Society concerned shall be the voter list for the purposes of 2017 election also and any addition thereto of any member or deletion there from would be done only after recording reasons for such deletion or addition and further that such decision would be taken in the meeting of the Managing Committee or the Board held in the presence of Block Development Officer, the Respondent no. 4 was not at all required to act on the basis of a list for inclusion of their name in the voter list without there being any cogent or sufficient material for this or without placing the matter before the Managing Committee or the



Board of the Society concerned.

(V) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. The contention of the petitioner has been recorded at paragraph no. 2 of the order dated 10.10.2017 and is reproduced hereinbelow for ready reference:

“The basic contention of the petitioner is that 67 persons, who were not members and had not been included in the voter list of Bikram Vyapar Mandal for which elections were held in the year 2011, subsequently in the voter list of the year 2017 their names have been included on the direction of the respondent no. 2 only on the basis of accepting affidavit from them. Learned counsel submitted that this was totally alien to law as there is no provision in law for the District Co-operative Officer to allow such inclusion by taking affidavit from the persons concerned. It was submitted that for the same, it has to be established that the persons concerned became members before the relevant cut off date, in accordance with law, since it is the power vested in the Managing Committee to decide such issue or the alternative for the aggrieved persons to move before the Registrar, Co-operative Societies under Section 48 of the Bihar Co-operative Societies Act, 1935, which in the present case has not been followed”.

4. At the very outset, both learned counsel for the State and the State Election Authority fairly admitted that the procedure adopted is not permissible in law. Learned counsel for the State further submitted that the officer concerned has filed a show cause before the superior authority seeking apology and indicating that



being new on the post, she could not understand the legal implications.

5. Learned counsel for the State Election Authority also supported the contention of the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, it is held that the 67 persons, who have been added as voters in the voter list of the year 2017 for Bikram Vyapar Mandal Election cannot be made voters as the procedure required in law has not been followed. As a consequence thereof, the elections are to be held on the basis of the list which was forwarded by the petitioner to the respondent no. 4, copy of which is at Annexure-3 to the writ petition. The procedure of filing of nomination paper onwards shall be completed expeditiously by the State Election Authority, in accordance with law, on the basis of the aforesaid voter list.

7. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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