

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.627 of 2016

In
Civil Writ Jurisdiction Case No.18760 of 2015

=====

Anil Kumar S/o Late Sonalal Sah R/o village + P.O. Narkatiya, P.S. Darpa,
District - East Champaran, Motihari

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Co - Operative Department, Govt. of Bihar, Patna
2. The Registrar, Co - Operative Society, Bihar, Patna
3. The District Co - Operative officer - Cum - Deputy Election Officer, Narkatiya, PACS, East Champaran, Motihari
4. The Assistant Registrar, Co - Operative Societies, Sikarhana Anchal, District East Champaran, Motihari
5. The Block Development officer, Chaudadano - Cum - Election officer, Narkatiya PACS, East Champaran - 845302
6. Vishal Kumar S/o Pradeep Kumar Gupta R/o village + P.O. Narkatiya, P.S. Darpa, District - East Champaran

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Sharda Nand Mishra Advocate Mr. Dhananjay Kumar Gupta Advocate Mr. Deepak Kumar Advocate
For the Respondent/s	:	Mr. A. K. Dubey AC to A.A.G. - 11
For the Cooperative	:	Ms. Kiran Kumari Advocate
For the Respondent No. 1:	:	Mr. Mukesh Kumar Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 30-11-2017

Heard counsel for the appellant and counsel for the respondents.

The impugned order of the Learned Single Judge, dated 23.02.2016, does not require any interference.



The Learned Single Judge has considered the matter, including the submissions made by the learned counsel appearing for the appellant that the Assistant Registrar also has powers vested in him in terms of a notification, therefore, the power exercised of entertaining an election petition cannot be said to be without jurisdiction. The Learned Single Judge had this to say:

“I have heard learned counsel for the parties on the issue noted above and have perused the records. A rather peculiar situation has arisen in the present case where following a recount it is the election petitioner who succeeds in the election by two votes but there is no such relief prayed by him in his election case. He does not even seek a declaration in his favour. A copy of the election petition is placed at Annexure – 2 to the writ petition and except for a prayer for recount, neither the private-respondent as the election petitioner prays to set aside the election of the writ petitioner nor does he seek a declaration in his favour or in favour of any other candidate. The lacuna is fatal and in such circumstances cannot ensure to the benefit of the election petitioner.

Another fact fatal to the election petitioner is that even when a prayer for recount is being made by the election petitioner he does not choose to arraign the other contestants to the post of Chairman of the Society who according to the petitioner are named in paragraph – 3 (iv) and are



seven in number including the writ petitioner and the election petitioner. The last of the infirmity in the proceedings is that the Assistant Registrar did not have a jurisdiction to entertain the election dispute until on reference it was transferred to him by the Registrar under Section 48(2) of the Act bearing in consideration the statutory provisions of Section 14A(6) of the 'the Act' which mandates a disposal of election petition in terms of Section 48 of the Act. The legal position on that issue stands discussed in the judgement of this Court since reported in 2015(4)PLJR359 (Katra Prakhanda Matasyajivi Sahyog Samiti Ltd. vs. State of Bihar) as well as in a recent judgement arising from C.W.J.C. No. 13830 of 2015 (Shamim Tabrej vs. State of Bihar) heard along with C.W.J.C. No. 14114 of 2015 (Kundan Kumar vs. State of Bihar) disposed of on 12.02.2016. This Court taking note of the statutory provisions as well as the scope and intent of the notification bearing No. 594, dated 31.10.2008 relied upon by the Registrar for upholding the jurisdiction by the Assistant Registrar has held that even if a jurisdiction has been so vested by the notification under reference which is in tune with the statutory provisions but such jurisdiction can be exercised by the authorities conferred with the powers of a Registrar under Section 6(2) of 'the Act' to assist the Registrar only when the dispute in question on reference, is referred by the Registrar to their jurisdiction under Section



48(2) of ‘the Act’. The issue stands well discussed and requires no further elaboration.”

The interpretation given to the said notification, dated 31.10.2008, by the Learned Single Judge, is a correct view under law. No interference is warranted with the order of the Learned Single Judge.

The appeal is dismissed, being devoid of merit.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	30.11.2017
Transmission Date	

