

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.708 of 2016

In
Civil Writ Jurisdiction Case No.13726 of 2014

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Kumar Manibhusan son of Parmeshwar Sahni Resident of Mohalla -
Sikandarpur, P.S. - Town, P.O. - Muzaffarpur, District - Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through its Principal Secretary Co-operative Department,
Govt. of Bihar, Patna.
2. The Registrar, Co-operative Society, Bihar, Patna.
3. The Bihar State Election Authority through its Chief Election Officer, 32
Harding Road, Patna - 800001.
4. Deputy Collector Land Reforms, Patna Sadar-cum-Election Officer, Bihar
Rajya Matasyajivi Sahkari Sangh Limited, Patna.
5. Bihar Rajya Matsyajivi Co-operative Union Limited, Patna, Bihar.
6. The District Co-operative Officer, Patna-cum-Administrator of Bihar Rajya
Matasyajivi Co-operative Union Limited, Patna.
7. Executive Magistrate, Patna Sadar-Cum-Deputy Election Officer, Bihar Rajya
Matasyajivi Sahkari Sangh Limited, Patna.
8. Circle Inspector, Patna Sadar-cum-Deputy Election Officer, Bihar Rajya
Matasyajivi Sahkari Sangh Limited Patna.
9. Sakaldeo Sahni Son of Birbal Sahani Resident of Village - Pakri Barkhurda,
P.S. - Hathori, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shankar Kumar Thakur
For the Respondent/s : Mr.

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

Date : 13-11-2017

I. A. No. 5349 of 2016 is allowed.

Delay of 35 days is condoned for the reasons indicated in the
condonation application. We are satisfied with the reasons for the
delay in filing the Letters Patent Appeal.



Interlocutory Application is allowed.

The matter is now taken up on merits, since the Learned Single Judge dismissed the writ application of the appellant vide order dated 13.01.2016, refusing to give any direction for recounting or grant any other relief in relation to an election, which was held sometime in the year 2013 and since the present appellant was the unsuccessful candidate he preferred an election dispute, which was registered as Election Dispute Case No. 79 of 2013 before the Registrar, Cooperative Society. The said election petition was dismissed, refusing to order any recount and, therefore, the writ application was preferred.

The Learned Single Judge has primarily taken note of the few facts as well as the law on the question. He has opined that in absence of declaration of the returned candidate to be declared as invalid or a prayer for setting aside his election, mere demand for recounting will be of no avail, especially after the result had already been declared and the successful candidate had been given his certificate. He also took note of the fact that in the election petition none of the contesting candidates had been made respondents, which by itself was an infirmity because no relief could be granted in favour of the appellant without the candidates



who could be affected by a decision for recount, being impleaded as party.

Yet another infirmity noted was that the so called invalid notes were not really invalid as the marking indicated clear intention of the voter and procedural guidelines issued by the Election Commission did not want such votes to be declared to be invalid.

In totality, therefore, it is desperate measure and effort on the part of the defeated candidate to upturn the popular result in favour of the returned candidate and not because there was any legal infirmity, which required recounting so that the relief of setting aside the election on such spacious ground could be achieved.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

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