

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.637 of 2016

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1. Bhogendra Sahni, son of Jageshwar Sahni, Resident of Village- Pindauli Dumari, P.S Katra, District Muzaffarpur, Elected Chairman, Katra Prakhand, Matasyajivi Sahyog Samiti Limited.
2. Subansh Sahni, son of late Ram Saran Sahni Resident of Village -Bhorha, P.S Katra, District Muzaffarpur.
3. Ram Binod Sahni Son of late Ram Lakhan Sahni Resident of Village- Siswara, P.s Katra, District Muzaffarpur.
4. Ram Prit Sahni son of Khobabi Sahni Resident of Village-Shivdaspur, P.S Katra, District Muzaffarpur.
5. Dinesh Sahni Son of Babuji Sahni Resident of Village- Siswara, P.S Katra, District Muzaffarpur.
6. Bharat Sahni, son of Shivji Sahni, Resident of Village- Siswara, P.S Katra, District Muzaffarpur.

..... Petitioner/s

Versus

1. The State of Bihar
 2. Registrar, Co-operative Societies, Bihar, Patna.
- Respondent 1st Party
3. Rajju Sahni, son of Pachkauri Sahni, Resident of Village- Tenwarda, P.S Katra, District Muzaffarpur , so called Acting Secretary of Katra Fishermen Co -operative Society, Muzaffarpur.
 4. Siya Saran Sahni, son of Bahadur Sahni, Resident of Village- Pahsaul, P.S. Katra, District Muzaffarpur.
 5. Ram Shiv Sahni, Son of Pritam Sahni, Resident of Village-Sanhauli, P.S. Katra, District Muzaffarpur.
 6. Singheshwar Sahni, Son of Manour Sahni, Resident of Village-Puprauli,, P.S Katra, District Muzaffarpur.
 7. Pramod Sahni, Son of Bilas Sahni, Resident of Village-Dargah, P.S. Katra, District Muzaffarpur.
 8. Jitendra Sahni, Son of Parikshan Sahni, Resident of Village+ P.S.- Katra, District Muzaffarpur.
 9. Mohan Sahni, son of late Ramnandan Sahni, Resident of Village-Nawada, P.S.- Katra, District Muzaffarpur.
- Respondent 2nd Party
10. Sagar Sahni, Son of Manchit Sahni, Resident of Village-Katra,P.S.- Katra, District-Muzaffarpur.
 11. Chandeshwar Sahni, Son of late Ram Charan Sahni Resident of Village-Lakhanpur , P.S.- Katra, District Muzaffarpur.
 12. Bhushan Sahni, Son of late Sukhnandan Sahni, Resident of Village-Tehwara, P.S.- Katra, District Muzaffarpur.



13. Jitendra Kumar Nishad son of Chandeshwar Sahni, Resident of Village-Katai ,
P.S.- Katra, District- Muzaffarpur.

-----Respondent 3rd Party

14. Katra Prakhanda Matasyajivi Sahyog Samiti Limited , having its office at Katra,
P.S.- Katra, District Muzaffarpur, through its so Called Acting Secretary.

.... Respondent 4th Party

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra with
Mr. Arvind Kumar Jha, Advocates
For the Pvt. Respondents : Ms. M. Chatterjee, Advocate
For the State : Mr. Sanjay Prasad, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-08-2017

Heard learned counsel for the petitioners, State and respondents no. 3, 6, 7, 8, 9, 12 and 13. Despite notice having been validly served on all remaining private respondents there was no representation on their behalf when the matter was taken up and heard.

2. The petitioners have moved the Court for the following reliefs:

“ (i) An appropriate writ, order or direction quashing the proceeding dated 21.07.2012, 22.07.2012 and 25.07.2012 as contained in Annexures 2, 4 and 5 as well as the order dated 16.10.2015/30.10.2015 passed by respondent no. 2 as contained in Annexure ‘9’, be issued.



(ii) An appropriate writ, order or direction commanding the respondent no. 2 to dispose of the petitioners case no. 155/2014 on its own merit within a time frame, be issued.

(iii) Further, prayer for issuance of any other appropriate writ/writs, order/orders, direction/directions and /or relief/reliefs which the Petitioners are entitled to in the facts and circumstances of the case.”

3. At the very outset, learned counsel for the petitioners submitted that due to efflux of time, the controversy with regard to the suspension/removal from various posts of the petitioners has become partly infructuous as the term of the said Managing Committee has already expired this year and fresh elections are going to be held for constitution of a new Managing Committee. However, it was submitted that due to suspension/removal from the post of the petitioners, the issue which is under challenge in this writ petition, they are not being considered as members of *Katra Prakhanda Matasyajivi Sahyog Samiti Limited* (hereinafter referred to as the ‘Society’), and thus, are neither eligible to vote nor to stand for any post of the Managing Committee. In view thereof, learned counsel submitted that he would be restricting his prayer/relief to the extent that the petitioners be considered to be members of the Society eligible for their names to be included in the voter list and for them to



stand for election to any post of the Managing Committee. Learned counsel submitted that though prior to any punitive action against the petitioners with regard to any fine being imposed on them, they being suspended or removed from the primary membership of the said Co-operative Society, there had to be adherence to the procedure stipulated in Rule 14 of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the 'Rules') read with bye law No. 9 (1) of the Society, the said procedure not being adopted, all subsequent actions against the petitioners have to be declared as null and void and accordingly set aside. It was submitted that Rule 14 (2) of the Rules requires that a member may be removed or expelled from the membership of a registered Society for such cause and in accordance with such procedure as may be prescribed under the bye laws. He further submitted that bye law No. 9 (1) requires that after enquiry into the conduct of the member and after necessary evidence being taken and recording reasons, either fine can be imposed or a member can be suspended or even removed. It was submitted that no show cause was ever served on the petitioners and thus, the subsequent decision of the Managing Committee or even the General Body has no meaning and is inconsequential in the eyes of law for the basic requirements of there being a show cause issued, enquiry held after taking evidence, not having been done, all secondary and



consequential steps taken automatically stand vitiated.

4. Learned counsel appearing for the private respondents submitted that a show cause was issued under registered cover but the same was refused to be accepted by the petitioners. However, on a query of the Court as to why evidence of such refusal was not brought on record which was in the possession of the concerned respondents and the stand recorded is that they had refused to accept the registered notice, there is no answer. Further query of the Court as to what was the show cause, attention was drawn to Annexure-C of the counter affidavit filed on behalf of the respondent no. 3, which purportedly is the show cause issued to the petitioners.

5. Learned counsel for the State is not a position to assist the Court.

6. Having considered the matter, in the opinion of the Court, the only issue which is required to be adjudicated and may be relevant for the present issue, without going into as to whether any show cause was actually issued to the petitioners, served on them or refused by them, is to form an opinion with regard to the so called show cause as has been brought on record by the private respondents themselves, copy of which is Annexure-C to their counter affidavit. For such purpose, it would be relevant to indicate the content of the said document. The document reads that the petitioners have been



found to be present in the Block Office on 24.06.2012 but chose not to attend the meeting of the Managing Committee and that it was indicative of their groupism and causing loss to the interest of the Committee for which there was adequate evidence available. Further, it was alleged that the Secretary had been unable to call meeting of the General Body due to which the settlement of the ponds could not be made. Thus, notice was given to reply within three days.

7. After going through the said contents of the show cause, which admittedly is the only show cause issued as per the private respondents themselves, the Court has no hesitation to hold that the same is totally vague and cannot be termed as a show cause. The first and foremost requirement of any show cause is that the person to whom it is issued is given due notice of the specific charges against him so that he is in a position to reply to such charges and to give his defence. It is surprising that only one specific charge has been narrated i.e., on 24.06.2012, though the petitioners were present in the Block Office but did not attend the meeting of the Managing Committee, and there being only a vague reference that they were involved in groupism and the same has caused loss to the interest of the Society for which there was adequate evidence available. The Court would pause here. Such statement, that adequate evidence was available, without there being any reference to any such evidence or



any specific instance given, is a mockery. The law, both in terms of the provisions of the Rules as well as bye laws stipulates that there has to be an enquiry and evidence recorded and then reasons given before any such action is taken against any member. On a query of the Court as to whether there was any enquiry and any evidence recorded, there is no reply by learned counsel for the private respondents. Nothing having brought on record or pleaded in the affidavit filed on behalf of private respondents, the Court can safely presume that there has been no enquiry or evidence taken or reasons recorded, muchless copy served on the petitioners.

8. In view of the Court coming to the definite conclusion that the show cause, copy of which has been brought on record in the counter affidavit on behalf of respondent no. 3, cannot be treated, in any view of the matter, as a show cause, principles of natural justice having been denied, the extreme action taken against the petitioners, and all subsequent actions, including the suspension of petitioners no. 1 and 2 from the primary membership of the Society and removal of petitioners no. 3 to 6 from the post held by them, are held to be null and void. As the term of the erstwhile Managing Committee of the Society has already expired, the petitioners cannot be put back in the position they were at the time such decision was taken, either by the Managing Committee or ratified by the General Body of the Society.



However, it is held that the petitioners remain members of the Society and are, thus, entitled for their names to be included in the voter list for the coming elections to be held this year and as a consequence thereof they are also held eligible and entitled to stand for election for any post of the Managing Committee, if otherwise not ineligible under any legal/statutory provision.

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

(Ahsanuddin Amanullah, J)

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