

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12935 of 2015

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Md. Subhan son of Sri Ashique Rai Resident of village- Salempur, P.O. Simla, P.S. Kasma, Anchal Refiganj, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through Registrar, Co-operative Society, Vikash Bhawan, 3rd Floor, Patna.
2. Joint Registrar, Co-operative Societies, Magadh Division, Gaya.
3. Dugal Pacs through Paid Manager, P.S. Kasma, Anchal Refiganj, District- Aurangabad.
4. Election Officer cum B.D.O. Rafiganj, Block District Aurangabad.
5. Sumer Prasad son of Vidyanand Prasad Resident of village Dugal, P.S. Kasma, Anchal Rafiganj, District Aurangabad.
6. Dinesh Singh son of Babulal Singh, Resident of village Dugal, P.S. Kasma, Anchal Rafiganj, District Aurangabad.
7. Md. Kurban son of Ashique Rai, Resident of village Salempur, P.O. Simla, Anchal Rafiganj, District Aurangabad.
8. Hesamul Haque son of Late Abdul Hakim resident of village Tatarchak, P.O. Simla, P.S. Kasma, Anchal Rafiganj, District Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the Respondent No. 8	:	Mr. P.K. Shahi, Sr. Advocate Mr. Arvind Kumar, Advocate
For the State	:	Mr. Mukul Prasad, AC to GP-18

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-08-2017

Heard learned counsel for the petitioner, State and the
respondent no. 8.

2. Despite valid service of notice on respondents no. 5,
6 and 7, nobody is present on their behalf when the matter is taken
up.

3. The petitioner has moved the Court against the order



dated 03.01.2015/14.01.2015 passed by the Joint Registrar, Co-operative Societies, Magadh Division, Gaya in Election Case No. 10(Ka) of 2014-15, by which his election as Chairman of Dugal PACS has been set aside and respondent no. 8 has been declared to be the elected Chairman in his place.

4. The petitioner along with others had contested the election for the post of Chairman of Dugal PACS and having polled the highest number of votes, was elected to the said post. The respondent no. 8, who was also a contestant and had secured the second highest number of votes, moved before the Joint Registrar, Co-operative Societies, Magadh Division, Gaya in Election Case No. 10(Ka) of 2014-15, with a prayer that the election of the petitioner be set aside on the ground that he was only a member and had not taken any share in the concerned PACS, which was a prerequisite for being eligible to hold any elective post of the society. The case was heard and by the order impugned dated 03.01.2015/14.01.2015, the election of the petitioner on the post of Chairman was set aside and further the respondent no. 8 was declared elected to the post.

5. Learned counsel for the petitioner submitted that the ground taken by the Joint Registrar for nullifying the election of the petitioner is erroneous both on facts as well as on law. He submitted that the receipt on which the petitioner relies to show that he had



paid the amount for obtaining a share in the PACS in question has not been accepted only on the ground that the original of the said receipt could not be produced before him. Learned counsel submitted that the original is available with him and also produced the same before this Court. Learned counsel submitted that even doubting the authenticity of the said receipt was misplaced. It was submitted that his receipt bore Serial No. 27515 dated 01.12.2007 for Rs. 11/- whereas the receipt submitted by the respondent no. 8 has Serial No. 80942 dated 28.12.2008 for Rs. 1/- and if the issuing authority of the said receipts had certified that the receipt shown by the petitioner bearing Serial No. 27515 was issued to another PACS only on 19.10.2010, then equally the serial number of the receipt shown by the respondent no. 8 bearing number 80942 could not have been issued in the year 2008. It was submitted that thus, without there being an investigation/enquiry on the issue as to whether the receipt produced by the petitioner or the respondent no. 8 was genuine, there could not have been a presumption against him.

6. Coming to the issue of the Joint Registrar exceeding his jurisdiction while passing the order to declare the respondent no. 8 as the elected Chairman, learned counsel refers to Sections 10(2) and 13 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act') which stipulate that where the petitioner of



an election petition, 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 candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates are required to be made a party to the petition, which in the present case was lacking. Further, only if the person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claims a declaration that he himself or any other candidate has been duly elected, the Prescribed Authority (Joint Registrar herein) has the power to declare the petitioner of such election dispute or such other candidate, as the case may be, to have been duly elected. It was submitted that in the present case, such prayer to declare the election petitioner (respondent no. 8) as elected, without any such prayer in the election petition, the order impugned, at least, to that extent is totally without jurisdiction and cannot be sustained.

7. Learned counsel for the respondent no. 8 submitted that the report by the Authority, who has issued the receipts to various PACS, states that such receipt was not only issued on 19.10.2010, but the same was also in favour of Ballar PACS and not the Dugal PACS as claimed by the petitioner. It was submitted that



once the receipt has been found to be not only invalid but patently fraudulent, for the reason that it has been used more than three years prior to the date of its issuance and also belonging to another PACS, the petitioner standing for the election based on such receipt was itself without any legal sanctity and in fact a fraud and thus, all subsequent acts based on such fraud, as per the settled law, also have to go. However, with regard to the contention of learned counsel for the petitioner that respondent no. 8 should not have been declared to have been elected as Chairman as no such prayer was there in the election dispute case, learned counsel for the respondent no. 8 was not in a position to defend the same.

8. Learned counsel for the State submitted that the Joint Registrar, in the background of the petitioner being found ineligible to contest the election, has rightly set aside his election. However, he also was not in a position to justify or defend the portion of the order by which respondent no. 8 has been declared as the Chairman of the PACS.

9. Having considered the rival contentions, the Court does not find any merit in the challenge of the petitioner to the setting aside of his election as Chairman of Dugal PACS. Though the issue has not been approached by the Joint Registrar in the manner in which the Court had looked at it on facts, the ultimate



arrival at the conclusion that the receipt shown by the petitioner in his favour could not help him to prove that he had bought a share by paying for the same, is confirmed from the records. Besides the fact recorded that the series of the receipts, from which Receipt No. 27515 has been taken, was issued after nearly three years from the date on which it is shown to have been issued in favour of the petitioner showing him to have paid Rs. 11/-, perusal of the same, copy of which has been made Annexure-1 to the writ petition, shows that it contains three columns. The first relates to entry fee, the second share money and the third membership fee. In column-1, the entry shows Rs. 1/- and in column-3, it is Rs. 10/- whereas there is no entry against column-2. Thus, even if it is assumed that the same is authentic, it clearly establishes that the petitioner had paid only Rs. 1/- as entry fee and Rs. 10/- as membership fee, but he had not paid anything as share money. This receipt is the only document on which the petitioner relies to prove that he had purchased a share in the PACS in question so as to make him eligible for contesting for the post of Chairman of the PACS. Section 44AQ (6) stipulates that to be eligible to hold any elective post of the society, in addition to paying a membership fee and becoming a full-fledged member of the society, he had to purchase at least one share of the society. In the present case, where there is no amount shown to have been paid for



purchase of a share and the entry only showing payment of entry fee and membership fee, the Court has no hesitation to hold that the petitioner, upon his own showing, had not paid any share money and thus, could not be said to have purchased even a single share of the society and so was clearly ineligible to hold any elective post and thus, could not have even contested for the post of Chairman, to which he was also elected. Thus, to that extent, the order of the Joint Registrar cannot be faulted and is upheld.

10. Coming to the other aspect of whether the Joint Registrar could have declared respondent no. 8 as the elected Chairman of the PACS in question, upon bare perusal of Sections 10(2) and 13 of the Act, such claim not having been made in the election petition filed by the respondent no. 8 before the Joint Registrar, declaring that the respondent no. 8 (election petitioner) stood duly elected as Chairman, is clearly unsustainable. Accordingly, order declaring the respondent no. 8 to be elected as Chairman of the PACS in question is set aside.

11. In the result, without interfering in the order impugned by which election of the petitioner as Chairman of Dugal PACS has been set aside, the further order declaring respondent no. 8 to be elected, also having been set aside by this order, the post stands vacated, for which the Election Authority under the Act shall



conduct elections in accordance with law expeditiously.

12. Let the Registrar, Co-operative Societies, Bihar, Patna communicate the order to the State Election Authority for the needful.

13. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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