

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16235 of 2012

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Vinod Kumar S/o Nandan Mahto, alias Nanddan Mahto, Resident of Village-
Amawan, P.O.-Amawan, Via-Barbiga, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bihar State Election Authority, Barrack No. 11, Old Secretariat, Patna through its Secretary.
3. District Magistrate, Nalanda-cum-District Election Officer, Vyapar Mandals.
4. District Cooperative Officer, Nalanda-cum-Dy. Election Officer, Vyapar Mandals.
5. Block Development Officer, Asthama, District- Nalanda.

..... Respondents 1st Party

6. Jitendra Kumar, S/o Ayodhya Prasad, resident of Village- Utharthu, P.S. Bind, District- Nalanda.
7. Suresh Prasad, S/o Rajo Mahto, resident of Village- Ahiyachak, P.O. Utharthu, P.S. Bind, District- Nalanda.
8. Bind Vyapar Mandal Cooperative Society having its office at Bind, P.S. Bind, District Nalanda through its Chairman.

.... Respondents 2nd Party

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Mr. Vinod Kumar and Mr. Bindhyachal Rai, Advocates
For the State	:	Mr. Kameshwar Prasad Gupta, G.P. 10
For the B.S.E.A.	:	Mr. Mukesh Kumar, Advocate
For the Respondent No. 6 & 7:	:	Mr. Chakrapani and Mr. Vijay Vatsyayan, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-10-2017

Heard learned counsel for the petitioner; State; State

Election Authority and respondents no. 6 and 7.

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

*“(1) An appropriate
writ, order or direction declaring the*



inclusion of persons as mentioned in Annexure-4 as illegal and arbitrary, be issued.

(ii) An appropriate writ, order or direction commanding the respondents 1st party not to allow the respondents 6 & 7 to participate in the ensuing election fixed for 31.8.2012, be issued.

(iii) An appropriate writ, order or direction quashing the list marked as Annexure.4 for election in the Asthama Vyapar Mandal Cooperative Society, be issued.”

3. The main issue involved is whether the respondents no. 6 and 7 residing within the geographical limit of Bind Block can participate in the Election for the *Vyapar Mandal Sahyog Samiti Limited* of Asthama Block in the District of Nalanda.

4. The writ petition was filed in the year 2012, when the names of respondents no. 6 and 7 were included in the voter list for election to the *Asthama Vyapar Mandal Sahyog Samiti* of Asthama Block, but due to efflux of time, today, the stage has reached when fresh elections are going to be held this year, i.e., 2017, though the situation remains the same.

5. The admitted position is that the erstwhile Asthama Block was bifurcated and a new Block of Bind was carved out of the same some time in the year 2009. In terms thereof, as per



the requirement of law, the persons whose residence fell in the two succeeding Blocks, that is, Asthama and Bind, automatically became members of the respective *Vyapar Mandal Sahyog Samiti Limited*, *ipso facto*. Thus, in the year 2012, when elections were to be held for the *Asthama Vyapar Mandal Sahyog Samiti Limited*, the petitioner finding the names of respondents no. 6 and 7 in the voter list had moved the Court, challenging such inclusion on the ground that they were residents of the newly carved out/born Bind Block. By a supplementary affidavit, the new voter list for the year 2017 elections has also been brought on record which discloses that the respondents no. 6 and 7 still finds place in such voter list.

6. The issue thus, primarily, has to be considered in terms of the relevant provisions of the statutes.

7. Learned counsel for the petitioner submitted that the State of Bihar through an administrative act, carved out Bind Block out of the then Asthama Block and the same having been done in the year 2009, in terms of the provisions of The Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'), The Bihar Co-operative Societies Rules, 1959 (hereinafter to as the 'Rules') and the Bye laws of the *Vyapar Mandal Sahyog Samiti Limited* (hereinafter refereed to as the 'Bye laws'). It was submitted that in terms of the Bye laws, the members who reside outside the



geographical area of the concerned *Vyapar Mandal Sahyog Samiti Limited* would automatically cease to be members of that *Vyapar Mandal Sahyog Samiti Limited*. For such proposition he relied upon Bye law no. 9 (ii) of the Bye laws. Learned counsel submitted that at the relevant point of time, in the year 2009 itself, the respondents no. 6 and 7 ceased to be members of the new *Asthama Vyapar Mandal Sahyog Samiti Limited* and automatically became members of the newly created *Bind Vyapar Mandal Sahyog Samiti Limited*. Learned counsel submitted that such fact is also borne out from the official voter list prepared for the *Bind Vyapar Mandal Sahyog Samiti Limited*, as of 30.04.2012, in which the name of the respondent no. 6 is at serial no. 18 and that of respondent no. 7 at serial no. 3. Copy of the said voter list, duly signed by the District Co-operative Officer, Nalanda dated 23.05.2012, has been made Annexure-4 to the writ application. Learned counsel submitted that once the respondents no. 6 and 7, in law as well as factually, have become members of *Bind Vyapar Mandal Sahyog Samiti Limited*, they cannot remain, much less contest for any post of *Asthama Vyapar Mandal Sahyog Samiti Limited*. Learned counsel submitted that even the State has admitted in its counter affidavit that *Bind Vyapar Mandal Sahyog Samiti Limited* was created and comprised of Chairman of PACS of Bind Block, special type Committees and



Government. Learned counsel submitted that even the respondent no. 6 in his nomination paper filed in the year 2012 for elections to be held then, has accepted about his name being included in the electoral roll of *Bind Vyapar Mandal Sahyog Samiti Limited*. Learned counsel further submitted that the said exercise was also held with regard to other such *Vyapar Mandals* which stood created on account of geographical re-organization of Blocks in the State of Bihar. By way of example, he submitted that the then Fatuha Block was bifurcated and two fresh Blocks i.e., Khushrupur and Daniyama were created which led to formation of two more *Vyapar Mandal Sahyog Samitis*, one each for Khushrupur and Daniyama and the original *Vyapar Mandal Sahyog Samiti Limited* of Fatuha was restricted to the geographical area remaining under Fatuha Block. It was further submitted that to a question in the Bihar State Legislative Council, the Hon'ble Minister, Department of Co-operation, Government of Bihar, has accepted the legal position that upon such carving out of fresh Blocks from an erstwhile Block, on the basis of the residence in a particular geographical area, such members of the original *Vyapar Mandal Sahyog Samiti Limited*, if their residence falls in the geographical boundary of the newly created Block, *ipso facto*, become members of the *Vyapar Mandal Sahyog Samiti Limited* of such Block.



8. Learned counsel for the State submitted that admittedly respondents no. 6 and 7 are now residents under the Bind Block and thus they can only be members of *Bind Vyapar Mandal Sahyog Samiti Limited*.

9. Learned counsel for the State Election Authority also took the same stand and submitted that even the Registrar, Cooperative Societies took a similar view and accepted that in the case of Fatuha, the persons who ceased to be resident of the new Fatuha Block, after carving out of two fresh Blocks of Khushrupur and Daniyama, automatically cease to be members of the new Fatuha Block. Learned counsel further clarified the position by submitting that in the year 2012 when instructions were sent to the Returning Officers for holding elections, it was clarified that there were two types of *Vyapar Mandals* existing; one which were running, prior to the amendment brought in the Rules in the year 2008, as per the old Bye laws and the other newly created *Vyapar Mandals* after the amendment which stipulates that henceforth there would be no individual member of such *Vyapar Mandals* and such *Vyapar Mandals* were to be governed by the new Bye laws of the year 2009. Learned counsel submitted that the official voter list of *Bind Vyapar Mandal Sahyog Samiti Limited* as of 30.04.2012 reflects such position where 35 individual members have been shown



as members of the said *Vyapar Mandal*.

10. Learned counsel for the respondents no. 6 and 7 submitted that they have to be members of some *Vyapar Mandal* and cannot be left in the lurch. It was submitted that they were entitled to remain as individual members and because of non constitution of *Bind Vyapar Mandal Sahyog Samiti Limited*, they shall be member of no *Vyapar Mandal*, which is not the intention of the statute. It was submitted that *Bind Vyapar Mandal Sahyog Samiti Limited* has not yet been constituted as there is no registration number for the same and elections were neither held in the year 2012 nor it is likely to be held in the year 2017 also, as the minimum coram for elections and constitution of the Managing Committee of the said *Vyapar Mandal* is still not complete. Learned counsel has also drawn the attention of the Court to Rule 12A of the Rules, especially its first proviso, to contend that individual member of any apex society or any central society shall continue to remain member of such society till such individual ceases to be member of such society for whatever reason and such membership shall not be transferable.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned counsel for the petitioner. The admitted position is that prior to the year 2009, there



was a unified *Vyapar Mandal Sahyog Samiti Limited* for the then existing Asthama Block. However, in the year 2009, after the creation of a fresh Bind Block from the erstwhile Asthama Block, in terms of the statutory Bye laws, contained in Letter No. 4234 dated 05.10.2009, the persons who go out of the area of operation of the committee shall cease to be member of such *Vyapar Mandal* in terms of Bye law no. 9 (ii) of the Bye laws. Thus, upon there being two Blocks formed from one original Asthama Block namely, Asthama and Bind, the *Vyapar Mandal Sahyog Samiti Limited* of the original Asthama Block also got bifurcated into two new *Vyapar Mandal Sahyog Samitis*, that is, *Asthama Vyapar Mandal Sahyog Samiti Limited* and *Bind Vyapar Mandal Sahyog Samiti Limited*, and depending on the residence of individual members, including the respondents no. 6 and 7, the membership of the newly created Asthama and Bind Blocks stood restricted to only such persons who were residents of the respective geographical area, which is also the area of operation of the concerned *Vyapar Mandal Sahyog Samiti Limited*. In other words, the respondents no. 6 and 7, whose residence falls in the geographical area of Bind Block, ceased to be members of the new *Asthama Vyapar Mandal Sahyog Samiti Limited* and automatically became members of the new *Bind Vyapar Mandal Sahyog Samiti Limited*. The formation of *Bind Vyapar Mandal*



Sahyog Samiti Limited has been admitted by the State in the counter affidavit filed on behalf of respondents no. 3 to 5 where at paragraph no. 6 it has been stated as under:

“6. That The said Co-opt. Society was reorganized and Bind Vyapar Mandal Co-opt. Society was created. As per the laws electoral roll of Bind Vyapar Mandal Co-opt. Society comprised of (i) Chairman of PACS of Bind Block (ii) special type committees and (iii) Govt. Rest of the members of erstwhile Vyapar Mandal, Asthawan remained in the Asthawan Vyapar Mandal Co-opt Society.”

12. Thus, the contention of learned counsel for the respondents no. 6 and 7 that *Bind Vyapar Mandal Sahyog Samiti Limited* was never created, cannot be accepted as it has been stated merely by way of submission before the Court without there being any affidavit controverting either the specific statement made in the writ petition with regard to creation of *Bind Vyapar Mandal Sahyog Samiti Limited* or the statement made in the counter affidavit filed by the State to such effect. Thus, the pure question of fact which has been stated, both in the writ petition, copy of which was served on learned counsel for the respondents no. 6 and 7 on 22.09.2017 itself and since then, the case having been heard on two earlier occasions and no counter affidavit or rebuttal of this fact having been made on



affidavit, the Court cannot accept such mere oral plea. Moreover, though the State has tried to defend the conduct of respondent no. 6 of having contested the election of *Asthama Vyapar Mandal Sahyog Samiti Limited*, in the year 2012, on the ground that he was an individual member, which is also the contention of learned counsel for the respondents no. 6 and 7 in view of the first proviso to Rule 12 A of the Rules, the Court is unable to accept such contention. Rule 12 A contemplates, that with effect from 26.11.2008, when the said amendment was notified, there shall be no individual member in any apex society or any central society and further no primary society shall be a member of any apex society. However, the first proviso provides that individual members of any apex society or central society shall continue to remain member of such society till such individual ceases to be a member of such society for whatever reason and such membership shall not be transferable. Thus, after the amendment brought in the Rule by adding Rule 12 A, there could not have been any individual member in the *Vyapar Mandal Sahyog Samiti Limited*, which is a central society, but exception was carved out for existing individual members to continue to remain members till they did not cease to be member of such society for whatever reason. In the present case, the proviso does not help the respondents no. 6 and 7 due to the fact that for a valid reason, that is,



based on statutory provisions, respondents no. 6 and 7, after the bifurcation of the erstwhile *Asthama Vyapar Mandal Sahyog Samiti Limited* and two new *Vyapar Mandals* coming into existence, namely *Asthama Vyapar Mandal Sahyog Samiti Limited* and *Bind Vyapar Mandal Sahyog Samiti Limited* in the year 2009, the individual membership of the respondents no. 6 and 7, no longer continued with the new *Asthama Vyapar Mandal Sahyog Samiti Limited*, as the same, *ipso facto*, stood transferred to the newly carved out/ born *Bind Vyapar Mandal Sahyog Samiti Limited*. Moreover, in terms of the statutory Bye laws of the year 2009, the respondents no. 6 and 7, in terms of the first proviso to Rule 12A, automatically become individual members of *Bind Vyapar Mandal Sahyog Samiti Limited* and, thus, they could have contested for any post of office bearer in that *Vyapar Mandal Sahyog Samiti Limited* only, but could not have done so in the new *Asthama Vyapar Mandal Sahyog Samiti Limited*. It is another matter, which is not before this Court, as to whether any election was held of the newly carved out *Bind Vyapar Mandal Sahyog Samiti Limited*, for which the respondents no. 6 and 7 had to move before the appropriate forum in accordance with law, if the same had not been constituted or elections not held. However, both, on the basis of averments made relating to this fact by the petitioner in the writ petition as well as in



the counter affidavit filed by the State, and also a list of 35 individual members of *Bind Vyapar Mandal Sahyog Samiti Limited*, including the respondents no. 6 and 7, as on 30.04.2012, duly certified by the District Cooperative Officer, Nalanda on 23.05.2012, being brought on record as Annexure-4 to the writ application, which have gone unrebutted by the respondents no. 6 and 7, the Court has to accept and hold that *Bind Vyapar Mandal Sahyog Samiti Limited* did come into existence. As stated earlier, if aggrieved, the respondents no. 6 and 7 were required to move before the appropriate forum for a direction for holding elections for the *Bind Vyapar Mandal Sahyog Samiti Limited*, which is a different and distinct cause of action available to them, but in any view of the matter, they could not have continued as individual members in the post bifurcation new *Asthama Vyapar Mandal Sahyog Samiti Limited* or could have stood for election to any post under the same. The Court would also indicate that once the respondent no. 6 has himself admitted that his name was included in the electoral roll of the *Bind Vyapar Mandal Sahyog Samiti Limited*, though he has tried to distinguish the same that it was in the capacity of PACS Chairman, asserting that he would still have a right to contest the election of *Asthama Vyapar Mandal Sahyog Samiti Limited* in the capacity of an individual member, is self contradictory. Being a member of *Bind Vyapar*



Mandal Sahyog Samiti Limited as PACS Chairman also presupposes that the respondent no. 6 is resident of Bind Block due to which he could become the Chairman of PACS located in Bind Block. Once this position is admitted, the statutory Bye laws of the year 2009 providing that only those individual who were already members of the central society, which includes *Vyapar Mandals*, can remain as individual members till they do not cease to be member of such Society for whatever reason and the reason being bifurcation of the Block itself, which in turn led to bifurcation of the erstwhile *Asthama Vyapar Mandal* also, by which two fresh *Vyapar Mandals* came into existence, namely, the new *Asthama Vyapar Mandal Sahyog Samiti Limited* and the new *Bind Vyapar Mandal Sahyog Samiti Limited*, and respondents no. 6 and 7 being residents of Bind Block, they stood transferred as members of *Bind Vyapar Mandal Sahyog Samiti Limited* and, thus, as has rightly been submitted by learned counsel for the respondents no. 6 and 7, they were entitled to remain individual members in terms of the first proviso of Rule 12A of the Rules, the only difference being that such individual membership of respondents no. 6 and 7 would not be of the new *Asthama Vyapar Mandal Sahyog Samiti Limited* but that of *Bind Vyapar Mandal Sahyog Samiti Limited*. It is not the case of the respondents no. 6 and 7 that they have been removed or prevented to



participate or be considered as individual members of *Bind Vyapar Mandal Sahyog Samiti Limited* coupled with the fact that the State has taken a categorical stand on oath in its affidavit that *Bind Vyapar Mandal Sahyog Samiti Limited* has already been created, the respondents no. 6 and 7 obviously cannot be associated with and remain members of the new *Asthama Vyapar Mandal Sahyog Samiti Limited*, subsequent to the bifurcation in the year 2009.

13. Learned counsel for the respondents no. 6 and 7 has also not brought before the Court any material to show that as per the original Bye laws, they shall continue to be members of *Asthama Vyapar Mandal Sahyog Samiti Limited*, despite the fact that the same has now been bifurcated into two *Vyapar Mandals* i.e., *Asthama* and *Bind*.

14. In view of the discussions made hereinabove and having considered the matter in totality, the writ petition stands allowed. It is held that the respondents no. 6 and 7 cannot remain as members of the post bifurcation new and existing *Asthama Vyapar Mandal Sahyog Samiti Limited*. The natural consequences of the same shall follow and neither in the elections nor the membership of the new *Asthama Vyapar Mandal Sahyog Samiti Limited* nor in the electoral roll for election of the office bearers of such body, the respondents no. 6 and 7 can have any claim. It goes without saying



that the State Election Authority shall proceed to conduct the elections of *Asthama Vyapar Mandal Sahyog Samiti Limited*, in accordance with law, expeditiously.

15. It has been informed that the election of *Asthama Vyapar Mandal Sahyog Samiti Limited* is scheduled for 17th October, 2017.

16. At this juncture, learned counsel for the respondents no. 6 and 7 submitted that only respondent no. 6 has filed his nomination paper for the post of member of the Managing Committee and respondent no. 7 has not done so.

17. In such view of the matter, the election scheduled for 17th October, 2017 shall proceed but the name of the respondent no. 6 shall not be included in the ballot. Learned counsel for the respondents no. 6 and 7, again interjected and submitted that respondent no. 6 would not like to get into this controversy and, thus, is himself withdrawing from such contest and both of them shall not raise any claim with regard to them being individual members of the now existing *Asthama Vyapar Mandal Sahyog Samiti Limited*.

18. The Court appreciates such stand taken on behalf of respondents no. 6 and 7.

19. Thus, the work of the State Election Authority has become easier and now they can proceed with the election only



with the difference that in view of the categorical stand taken by respondent no. 6 before this Court in the present proceeding, his name shall not to be included in the ballot paper for the election scheduled for 17th October, 2017.

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

(Ahsanuddin Amanullah, J.)

Anand Kr.

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