

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8556 of 2015

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Suresh Modi S/o Late Sitaram Modi, Resident of Khas Bazar, Haveli Kharagpur,
P.S. Haveli Kharagpur, District Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Agriculture and Animal Husbandry (Animal Husbandry Section), New Secretariat, Patna.
2. The Director, Animal Husbandry Department, Government of Bihar, Patna.
3. The Registrar of Goshala, Animal Husbandry Department, Government of Bihar, Patna.
4. Goshala Development Officer, Bihar, Patna.
5. Sub Divisional Officer, Haveli Kharagpur, District Munger.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Nand Gopal Mishra, Advocate
For the State : Mrs. Kumari Amrita, G.P.-3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 13-02-2017

The challenge in the present petition is to Regulation 3-C of the Bihar Goshala Regulation, 1954 framed under the Bihar Goshala Act, 1950.

2. The offending Regulation 3-C reads as under:

“3.C. Election of Committee of management:- The election of the Committee shall be held on a date and at the time and place fixed by the sub-divisional officer. The voting shall be by show of hands. But in case of equality of votes, the President shall have second or casting vote.”



3. The challenge is on the ground that election by show of hands will deter the members present to express freely their view point as they are likely to be exposed in case of any objection to the action of the authorities who are in controlling situation.

4. We do not find that the condition of election by show of hands can be said to be illegal or arbitrary. Somewhat similar provision contained in the Representation of People Act, 1951 has been upheld by the Constitution Bench of the Hon'ble Supreme Court in *Kuldip Nayar and others v. Union of India and others*, (2006) 7 SCC 1. The Court has held to the following effect :

“450. It is, therefore, evident that the right to vote is a concept which has to yield to a concept of the attainment of free and fair elections. The nature of elections, namely, direct or indirect, regulates the concept of right to vote. Where elections are direct, secret voting is insisted upon. Where elections are indirect and where members are chosen by indirect means, such as, by parliament or by legislative assembly or by executive, then open ballot can be introduced as a concept under the electoral system of voting. In the case of direct elections, members are chosen directly by popular vote which is not the case under indirect elections. Therefore, it cannot be said that the concept of open ballot would defect the attainment of free and fair elections.

451 to 462. xx xx xx xx xx

463. The principle of secrecy is not an absolute principle. The legislative amendment cannot be struck down on the ground that a different or better view is possible. It is well settled that a challenge to legislation cannot be decided on the basis of there being another view which may be more



reasonable or acceptable. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any constitutional provision or violate the fundamental rights.

464. The secrecy of ballot is a vital principle for ensuring free and fair elections. *The higher principle, however, is free and fair elections and purity of elections.* If secrecy becomes a source for corruption then sunlight and transparency have the capacity to remove it. We can only say that legislation pursuant to a legislative policy that transparency will eliminate the evil that has crept in would hopefully serve the larger object of free and fair elections.”

5. In view of the above, we do not find that Regulation 3-C framed under the Statute can be said to be illegal or unjustified. Consequently, the challenge to the said Regulation cannot be sustained.

6. Another argument raised by the petitioner is that the members, who are tenants or agriculturists, should be excluded from the member of the committee as they are interested parties and can be partisan to the Goshala.

7. What should be the criteria of membership of the Managing Committee is the matter of the Legislature to define and prescribe. If a particular provision has been made by the Legislature as a condition of eligibility, the Court cannot add any other condition of eligibility in respect of the membership of the Managing



Committee.

8. In view thereof, we do not find any merit in the present writ application. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
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