

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12230 of 2017

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Manik Chandra Mallah @ Manik Chand Son of Late Harihar Mallah Resident of Village- Andar, P.O.+ P.S. Andar, District Siwan and elected mantri of the previous election of 2012 of Andar Block Matasyajivi Sahyog Samiti, Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Bihar State Election Authority, Patna.
3. District Magistrate-cum- District Election Officer, Matasyajivi Sahyog Samiti, Siwan.
4. District Cooperative Officer, Siwan.
5. Block Development Office-cum- Returning Officer, Matasyajivi Sahyog Samiti Limited.
6. Block Co-operative Extension Officer, Andar, Siwan.
7. Chhotelal Sahani Son of Late Rambilash Sahani Resident of Village- Kandhpokar, P.S. Osao, District- Siwan.
8. Gopal Sahani Son of Devnarayan Sahni Resident of Village-Kandh Pakar, P.S. Osao, District- Siwan.
9. Mahanth Bin Son of Babulal Bin Resident of Village Rakauli, P.S. Raghunathpur, District- Siwan.
10. Nanhe Bin Son of Ramusare Bin Resident of Village Rakauli, P.S. Raghunathpur, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-11-2017

Heard learned counsel for the petitioner; State; State
Election Authority and respondents no. 7 to 10.



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

“(I.) For issuance of writ in the nature of mandamus directing the respondents to delete the name of four persons standing at serial No. 252, 253, 254 and 255 in the Final Draft Voter List as published on 02/08/2017 by the respondent No. 5 for conducting election of Andar Block Matasyajivi Sahyog Samiti (here in after Samiti) on the basis of cutoff date of 30/06/2017 which have wrongly been inserted by the authorities concerned by changing the last page of Draft Voter List as submitted by the petitioner before DCO. Siwan on 30/06/2017 with forwarding of Block Co-operative Extension Officer, Andar, Siwan as the name of aforesaid persons were not included in the draft voter list as submitted before DCO.

(II) For direction to the respondents to published a fresh draft voter list in accordance with law on the basis of list as submitted by the petitioner on 30/06/2017 being a Mantri of the Andar Block Matasyajivi Sahyog Samiti and to conduct the election on that very basis.

(III.) For direction to the higher authority to take action against the respondents concerned who have changed the last page of the Draft Voter List as submitted by the petitioner.

(IV.) For any other relief for which/reliefs which may deem fit and proper in the fact and circumstances of the case.”

3. The contention of the petitioner is that the list forwarded by him to the authorities concerned for conducting election for constituting the Managing Committee of *Andar Matasyajivi Sahyog Samiti Limited*, in the district of Siwan on 30.07.2017 should form the basis for conduct of such election and that the addition of the names of respondents no. 7 to 10 in the said



list by the respondent no. 6 is not permissible.

4. Learned counsel for the petitioner submitted that being the Secretary of the Society, he had forwarded the list of voters which contains names of only 251 persons and ran into six pages. It was submitted that while finalizing the voter list, the authorities have accepted the list but have added the name of respondents no. 7 to 10 in the last page and to that extent only, the list has been interfered with. Learned counsel submitted that the respondents no. 7 to 10 were initially reflected in the voter list of the year 2012, but upon objection, it was found that they had already been expelled from the membership of the Society and thus, their name was deleted in the final voter list of the year 2012. Learned counsel submitted that till date, they have neither been readmitted nor their expulsion revoked by the Managing Committee. Thus, the addition of their name in the final voter list was impermissible. Learned counsel submitted that even if the list submitted by the petitioner was not proper as his term to the office of the Secretary of the Society had expired, the major portion of the list submitted by him having been upheld and only four names having been added is not proper as no justification has been shown for the same. Learned counsel further submitted that the respondents have also not followed the procedure required for addition of the names of respondents no. 7 to 10 in the voter list in



terms of the direction issued by the State Election Authority contained in Letter No. 560 dated 24.08.2016. He further submitted that page no. 6 of the final voter list, copy of which has been brought on record in the writ petition and is part of Annexure-8, does not tally with the final voter list, which has been brought on record by the State authorities in their counter affidavit filed on behalf of the respondent no. 4. It was further submitted that the application for fresh membership by the respondents no. 7 to 10 was also rejected on 24.02.2017.

5. Learned counsel for the State and the private respondents, who have also filed their counter affidavit submitted that the basis on which the writ petition has been filed is itself unsustainable for the reason that the claim of the petitioner is based solely on the list purportedly submitted by him on 30.06.2017, when he was no longer the Secretary of the Society as his term had expired on 22.05.2017 itself. It was further submitted that the respondent no. 6 was the Administrator and thus, it was for him to send the list and once he has certified the said list, the same has to be accepted and at least the petitioner cannot object as he was a non-entity for the purposes of submitting any official voter list to the authorities concerned and only as a member, he could have later on objected to any inclusion or omission in the list. Learned counsel submitted that



the initial removal of the respondents no. 7 to 10 itself, even in the year 2011, was not as per the statutory requirements under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act') and the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the 'Rules') as well as the Bye-laws of the Society. Learned counsel submitted that the fact that the respondents no. 7 to 10 had applied for fresh membership has not even been mentioned in the writ application filed by the petitioner and thus, it is suppression of vital facts and on this ground alone, the writ petition deserves to be dismissed. It was further submitted that the admitted position is that the respondents no. 7 to 10 had applied again for membership on 14.02.2017 and in terms of sub Rules (d) and (e) of Rule 7(1) of the Rules, if no decision is communicated to the applicant within 15 days of receipt of the application, it is to be deemed that the application has been accepted and the applicant has been admitted to be the membership of the Society. It was submitted that in the present case, even from the pleadings, the stand taken was that the decision was taken on 24.02.2017 and such information was put up on the notice board. Learned counsel submitted that the law specifically and mandatorily requires that such decision has to be communicated to the applicant and in the present case, even if it is presumed that the decision was put up on the notice board, it does not satisfy the



requirement of law. Thus, the respondents no. 7 to 10 have to be deemed to have become members on 1st March, 2017 i.e., upon expiry of 15 days from the date of receipt of the application on 14.02.2017. Learned counsel submitted that on the cut-off-date 30.06.2017, the respondents no. 7 to 10 had already, by such deeming clause in the Rules, had become members and their names had to be included in the voter list for election to be held in the year 2017, as had rightly been done by the authorities.

6. Learned counsel for the petitioner, at this stage submitted that in the supplementary affidavit filed on behalf of the petitioner yesterday, it has been stated that the said order of rejection of their application for membership was also communicated to the respondents no. 7 to 10 but they refused to give a receipt of the same.

7. Having considered the matter, the Court does not find any merit in the writ application. The contention of learned counsel for the respondents that the very basis of the petitioner asserting a right and alleging wrong is based on a list which he is said to have forwarded to the authorities on 30.06.2017. The fact that the term of office of the petitioner as Secretary of the Society expired on 22.05.2017, is not in dispute and thus, after that day, the petitioner having become *functus officio*, has absolutely no authority to forward any official list to the authorities in the present case. The same



having been done, the list forwarded by him cannot be considered in law as the list forwarded by the Society for the purposes of consideration by the authorities. The mere fact that the list has been accepted in major part would not mean that the list of the petitioner has been accepted by the authorities for the simple reason that if the names which have been accepted, are also correct, there cannot be any dispute or controversy with regard to the names of such persons also finding place in the final voter list of the Society. However, the final voter list which has ultimately been published, which includes the names of respondents no. 7 to 10, has to be considered in the eyes of law as the only list since it has been forwarded by the respondent no. 6, who is also the Administrator of the Society, after the term of office of the previous Managing Committee having come to an end on 22.05.2017. Moreover, even formal appointment of the Administrator has also been made on 20.06.2017 i.e., much prior to the petitioner having sent his list to the authorities on 30.06.2017.

8. A very glaring and worrying angle in the whole episode, is the conduct of the petitioner in the present case. In the hearing of the matter on 30.10.2017, on a specific query of the Court to learned counsel for the petitioner as to what was available on record to show that the decision of the Managing Committee rejecting their application for being made as new members, was



communicated to them, initially, he had taken the stand that it was pasted on the notice board. However, the Court had observed that the legal requirement is that it had to be communicated, which meant that it had to be actually served to the respondents no. 7 to 10 physically or the service had to be such which is acceptable and valid in the eyes of law to indicate that they were made aware of such rejection. The Court had further observed that the normal practice is that if any communication is taken to the person to whom it is required to be communicated in terms of any legal provision, the obvious mode and procedure is that the person who has taken it to be served, would endorse that such person either refused to accept or he had accepted but refused to give a receipt for the same, in the presence of witnesses. At that time, learned counsel for the petitioner had taken time to seek instructions and the matter was directed to be listed on 1st November, 2017 i.e., yesterday. Yesterday, a supplementary affidavit was filed on behalf of the petitioner in which Annexure-15 was brought on record which was purportedly a copy of the issue register and which indicated that the petitioner had himself gone to hand over the communication with regard to the decision of the Managing Committee dated 24.02.2017 rejecting their application. The Court is surprised that the observation made in open Court on 30.10.2017 has almost verbatim been



reflected in the noting of the issue register. The Court deems it appropriate to record the noting made in the issue register.

“In charo logo ko humlogo ke samne aaj dinank 24/02/17 ko mantri dwara sadasyata Aswikrit sambandhit patra diya gaya jise we log prapta kiya parantu panji me hathakshar banane ko kahne par nahi kiya”

9. The same, accordingly to the petitioner, who is present in Court, has been written by one Laxman Sahani and has also been signed by Parbhu Sahani and Dilip Kumar Bind.

10. The Court has no hesitation to record that the said endorsement is clearly an afterthought, for the reason that such an important fact that the decision had been communicated to the respondents no. 7 to 10, not having been mentioned in the writ pleadings or even in the communication made by the petitioner to the authorities, including that to the respondent no. 5, as late as 24.07.2017, clearly indicates that the same was not done. Moreover, there is a specific statement in the rejoinder filed by him to the counter affidavit of the respondents no. 3 and 4, where at paragraph no. 9 the following has been stated:

“9. That soon after decision of Managing Committee the information with regard to rejection of application of respondent No. 07 to 10 was published on Notice Board as well as vide letter No. 24/17 dated 24/02/2017 issued by the Mantri or the Samity the information of rejection of membership application was given to the private



respondents No. 07 to 10 within stipulated period by the Mantri on same very day when respondents visited in the office after perusing the information on open Notice board.”

11. The same not even indicating that the communication was made to the respondents no. 7 to 10, which they refused to acknowledge, leaves no doubt in the mind of the Court that such communication was never made and thus, endorsement made on the issue register would not satisfy the requirement or Rule 7. Moreover, it is totally unbelievable that the meeting of the Managing Committee would be held on 24.02.2017, a decision taken and the same is pasted on the notice board and the respondents no. 7 to 10 would come to the office on the same day and see the notice and copy of the same would also be ready to be served on them, though it is alleged that they refused to accept the same, all on the same day, i.e., 24.02.2017. The most striking feature is that this most vital fact of letter being served on respondents no. 7 to 10, even though allegedly refused to be accepted by them, has not been stated anywhere before any authority and even in the present writ petition. Such stand has been taken for the very first time and that also only on 01.01.2017 in the supplementary affidavit.

12. In view of the aforesaid, the voter list submitted by the petitioner cannot be said to be in terms of the requirement of the



statutory provisions as he was not the Secretary of the Society on the date on which the list was sent and further it was responsibility of the Administrator to do the same. The position of respondents no. 7 to 10 with regard to their membership also needs to be finally adjudicated by the competent authority.

13. Having considered the matter in its entirety, the writ petition stands disposed off by setting aside the election already held pursuant to initiation of the process, on the basis of the list submitted by the petitioner, which has been held to be illegal. Moreover, by order of this Court earlier dated 01.09.2017, the respondents no. 7 to 10 were debarred from taking part in the election and thereafter by order dated 15.09.2017, the counting of votes and declaration of result was stayed. Since the right of the respondents no. 7 to 10 has to be decided by the competent authority, the election has to be held afresh in terms of a freshly prepared voter list, as per the statutory requirements, only thereafter.

14. For the said purpose, the Court deems it appropriate to direct that the District Co-operative Officer, Siwan (respondent no. 4) to look into the issue personally and then prepare the voter list of the Society. The same be done within four weeks from today and thereafter the State Election Authority shall ensure that the elections are held based on the said voter list, without any undue delay, in



accordance with law.

15. Learned counsel for the State as well as the State Election Authority shall communicate the order to the concerned officers for compliance.

(Ahsanuddin Amanullah, J.)

P. Kumar

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