

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7035 of 2017

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1. Rahue Matsyajivi Sahyog Samiti, Banbaripur Mora, Rahue, Police Station- Rahue, District- Nalanda through its Secretary namely Anirudh Prasad, son of Late Brahmdeo Prasad, resident of Village- Banbaripur Mora, Police Station- Wena, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Animal Husbandry and Fisheries Department, Govt. of Bihar, Patna.
3. The Director, Fisheries Department, Govt. of Bihar, Patna.
4. The Registrar Co-operative Societies, Govt. of Bihar, Patna.
5. The District Magistrate cum District Returning Officer, Nalanda at Biharsharif.
6. The District Co-operative Officer, Nalanda at Biharsharif.
7. Md. Amzad Hayatwork, The District Co-operative Office, Nalanda at Biharsharif.
8. The Block Development Officer cum Returning Officer, Rahue, Police Station- Rahue, District Nalanda.
9. The Block Co-operative Office, Rahue, Nalanda.
10. Vijay Choudhary, The Block Co-operative Officer, Rahue, Nalanda.
11. Kalyan Kumar, Head Clerk, District Co-operative Office, Nalanda, Biharsharif.
12. The Bihar State Election Authority, 32 Harding Road, Patna.
13. The Chief Election Officer, the Bihar State Election Authority, 32 Harding Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Verma
For the Respondent/s : Mr. Md. Khurshid Alam-Aag12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

2 12-06-2017 Heard learned Counsel for the petitioner and

learned Counsel appearing on behalf of Bihar State Election

Authority.

The petitioner seeks quashing of voters' list,



dated 27.04.2017, of Rahue Matsyajivi Sahyog Samiti, published under the signature of the Block Development Officer –cum- Returning Officer, Rahue, for election.

It is the case of the petitioner that the Returning Officer has, without applying his judicial mind and without considering objection submitted by the petitioner, has published the said list.

Learned Counsel appearing on behalf of the Bihar State Election Authority has raised a preliminary objection over the maintainability of the writ application with reference to Sections 10 and 11 of the Bihar State Election Authority Act, 2008. Sections 10 and 11 of the Bihar State Election Authority Act, 2008, read thus:

“10. Election Petition.— (1)

(i) The election to any office of a body shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of body is under dispute, the election petition shall lie before such authority as is prescribed under the Act or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before such Authority, which the State Government may prescribe by issuance of notification.

(2) Parties to the petition.— A



petitioner shall join as a respondent to this petition-

(a) Where the petitioner, 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 candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) Any other candidate against whom allegations of any corrupt practice are made in the petitioner.

11. Bar to interference by Courts in electoral matters.— Notwithstanding anything contained in this Act-

(a) The validity of any order relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made shall not be called in question in any court;

(b) **No election to any body shall be called in question except by an election petition presented to the Prescribed Authority under this Act."**

(Emphasis is supplied)

This is, thus, not in dispute that the Act provides



for mechanism and procedure for holding election and resolving the disputes arising out of elections to various Managing Committees in co-operative societies.

Election to the Managing Committee of the concerned Fishermen Co-operative Society has already been notified and the elections are going to be held in two phases, on 22.06.2016 and 10.07.2017.

Learned Counsel appearing on behalf of the petitioner, responding to the said preliminary objection, has relied on a decision of this Court in the case of **Bihar Rajya Sahkari Vikash Samanway Samiti and Another v. State of Bihar**, reported in **2015 (3) PLJR 905**, to contend that the said bar, under Sections 10 and 11 of the Bihar State Election Authority Act, 2008, cannot prohibit this Court from exercising extra-ordinary power under Article 226 of the Constitution of India. According to him, no statutory provision can take away the High Court's jurisdiction to issue prerogative writs under Article 226 of the Constitution of India.

Learned Counsel for the petitioner has submitted that by preparing the electoral roll, the District Co-operative Officer, Nalanda, at Biharsharif, has not followed the guidelines for preparation of electoral roll issued by the State Government and, therefore, this Court's



intervention in the matter is required.

I find merit in the preliminary objection raised on behalf of the Bihar State Election Authority in view of the nature of dispute which has been raised.

Since it is the case of the petitioner that even such persons who are defaulters have been included in the electoral roll.

Such dispute, in my view, can be duly raised in properly framed election petition and cannot be adjudicated upon in a proceeding under Article 226 of the Constitution of India. There is being specific bar under Section 11 (b) of the Act as noticed above, I do not intend to entertain this application as no case of exceptional circumstance is made out for exercising power under Article 226 of the Constitution of India, despite there being statutory bar.

This application is, accordingly, dismissed as not maintainable.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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