

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10935 of 2015

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1. Uma Kant Yadav, Son of Late Tarni Prasad Yadav, resident of village - Belwa Kamat, P.O. Belwa, Police Station Muffasil Rani Patra, District - Purnea (Chairman Vyapar Mandal, Gulabbag, Purnia).
2. Pankaj Kumar, Son of Sri Jyotish Yadav, resident of village - Maharajpur, P.O. Pokharia, Police Station - Muffasil Rani Patra, District - Purnea (Chairman Maharajpur PACS).
3. Dilip Yadav, Son of Late Jhari Lal Yadav, resident of Village - Gaura, P.O. Gaura, Police Station - Muffasil Ranipatra, District - Purnea (Chairman Gaura PACS).

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Cabinet Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department of General Administrative, Govt. of Bihar, Old Secretariat, Patna.
4. The Principal Secretary Department of Co - Operative Societies, Govt. of Bihar, New Secretariat, Patna.
5. The Registrar, Co - Operative Societies, Govt. of Bihar, New Secretariat, Patna.

.... Respondents

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Appearance :

For the Petitioners : M/S. Aditya Narain Singh and Kundan Kumar Sinha, Advocates.

For the Respondents : Mr. Bishwa Bibhuti Kumar Singh, A.C. to P.A.A.G. 1.

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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: 19-01-2017

The challenge in the present writ application is to Clause-
‘f’ of sub rule (1) of Rule 23 of Bihar Co-operative Societies Rules,
1959 inserted by amending on 01.02.1997. The relevant Clause reads
as under:-

“Rule 23(1) (f) “a criminal proceeding relating to any transaction of a



registered society is pending against him in which cognizance has been taken”.

The challenge is on the ground that it is in violation of the principle enumerated in Articles 14, 16 and 21 of the Constitution of India. Clause ‘f’ holds a person guilty or found a person as criminal only because an allegation is made against him of committing a criminal offence relating to any transaction of a registered society without the conclusion of trial of the case.

In the writ application, the petitioners have sought to explain the meaning of cognizance to the effect that the cognizance is not the same as framing of the charges.

Rule 23(1) has been framed in exercise of power conferred on the State in terms of Section 66 (2) (1) of Bihar Co-operative Societies Act, 1935. It provides that the conditions of contesting elections can be fixed under the Rules. As per Clause-‘f’, if any criminal proceeding relating to any transaction of a registered Society is pending against a person in which cognizance has been taken, then such person is not eligible to contest elections. Since the election is to Co-operative Society, therefore, transaction of a Co-operative Society of which cognizance has been taken is relevant consideration to make the candidate ineligible for contest.

The election to any Institution is not a fundamental right. It



is a statutory right; therefore, the State Legislative is competent to determine the condition of eligibility. The Supreme Court in a recent judgment reported as Rajbala v. State of Haryana, (2016) 2 SCC 445 was considering the categories of a person, who is incapable to contest the Panchayat Elections. One of the eligibility of the conditions was in respect to a person who did not possess the educational qualification. After considering the judgments reported as AIR 1952 SC 64 (N.P. Ponnuswami v. Returning Officer); 1982 (1) SCC 691 (Jyoti Basu Vs. Debi Ghoshal) and other judgments, concluded as under:

40. The next question is-whether such constitutional rights exist in the context of elections to the panchayats? Having regard to the scheme of Part IX of the Constitution, the purpose Bhanumati V. State of U.P., (2010)12 SCC 1, p. 14, para 33 for which Part IX came to be introduced in the Constitution by way of an amendment, we do not see any reason to take a different view.

41. On the other hand, this Court in Javed v. State of Haryana (2003) 8 SCC 369, held that: (SCC p. 384, para 22)

“22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in panchayat may be said to be a constitutional right...”

42. We need to examine contours of the two rights, i.e. the **right to vote** (to elect) and the **right to contest** (to get elected) in the context of elections to Panchayats. Part IX of the Constitution does not contain any express provision comparable to Article 326 nor does it contain any express provisions comparable to Articles 84 and 173. The text of Article 326 does not cover electoral rights



with respect to panchayats. Therefore, the following questions arise:

42.1. (i) Whether a non-citizen can become a voter or can contest and get elected for panchayats?

42.2.(ii) In the absence of any express provision, what is the minimum age-limit by which a person becomes entitled to a constitutional right either to become a voter or get elected to panchayats?

42.3 (iii) Are there any constitutionally prescribed qualifications or disqualifications for the exercise of such rights?

42.4. (iv) Questions (i) and (ii) do not arise on the facts of the present case. Therefore, we desist examination of these questions.

44. It appears from the above that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the legislatures of the State concerned is also disqualified for being a member of panchayat. In other words **qualifications** and **disqualifications** relevant for membership of the legislature are equally made applicable by reference to the membership of panchayats. Though such **qualifications** and **disqualifications** could be stipulated only by Parliament with respect to the membership of the legislature of a State, Article 243-F authorises the State Legislature concerned also to stipulate disqualifications for being a member of panchayat.

45. The **right to vote** at and **right to contest** an election to a panchayat are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate legislature directly. Parliament can indirectly curtail only the **right to contest** by prescribing **disqualifications** for membership of the legislature of a State.

46. It is a settled principle of law that curtailment of any right whether such a right emanates from common law, customary law or the Constitution can only be done by law made by an appropriate legislative body. Under the scheme of our



Constitution, the appropriateness of the legislative body is determined on the basis of the nature of the rights sought to be curtailed or relevant and the competence of the legislative body to deal with the right having regard to the distribution of legislative powers between Parliament and State Legislatures. It is also the settled principle of law under our Constitution that every law made by any legislative body must be consistent with provisions of the Constitution.”

In view of the detailed discussions in the aforesaid judgment, we do not find that the condition of eligibility in Clause ‘f’ of sub rule (1) of Rule 23 of the Rules can be said to be illegal for the reason that the cognizance has been taken against a person in respect to transactions of Co-operative Societies, the same being within the legislative competence of State legislature.

Accordingly, the present writ application is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./Amit

AFR/NAFR	AFR
CAV DATE	NA
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