

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12689 of 2017

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1. Ganeshi Sahni, Son of Munni Lal Sahni, resident of village- Vishanpur Ani, P.S.-Khanpur, District-Samastipur, Chairman of Khanpur Prakhand Matshyajivi Sahyog Samiti Ltd. Khanpur.
 2. Khanpur Prakhand Matsyajivi Shyog Samiti Ltd. Khanpur through its Secretary Mahendra Sahni, so of Ram Vilash Sahni, R/o village-Amsour, P.S.-Khanpur, District-Samastipur.
 3. Ram Kumar Sahni, Son of Ramsagar Sahni, R/o Village-Sobhantara, P.S.-Sobhan, P.S.-Khanpur, District-Samastipur, member of the managing committee of Khanpur Prakhand Matsayajivi Sahyog Samiti Ltd. Khanpur.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary Co-operative Department, Bihar, Patna.
2. The Chief Election Officer of Bihar State Election Authority, Harding Road, Patna.
3. The Registrar Co-operative Societies, Bihar, Patna.
4. The District Magistrate cum District Election Officer, Samastipur.
5. The District Co-operative Officer, Samastipur.
6. The Election Officer Cam Block Development Officer, Khanpur, District-Samastipur.
7. The Block Co-operative Extension Officer, Khanpur, District-Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the State : Mr. Amit Prakash, GA-13
For the Election Authority : Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-09-2017



Heard learned counsel for the petitioners; State and State Election Authority.

2. The petitioners have moved the Court for the following relief:

“That this application is for issuance of writ of mandamus directing the Respondent no. 6 to issue fresh voter list after removing the names of 388 newly added members which have been illegally added by respondent no. 6 in final voter list by way of supplementary voter list from Sl. NO. 2953 to 3340 in the light of sec. 7(4) of the Bihar co-operative rules 1959 such action of respondent no. 6 is wholly illegal without jurisdiction and against the provision of law.”

3. In sum and substance, the contention is that the order impugned by which 388 persons have been directed to be made members of petitioner no. 2 Society is beyond jurisdiction for the same is purportedly in exercise of power under Rule 7(4) of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the ‘Rules’).

4. Learned counsel for the petitioners submitted that the power under the aforesaid Rules is limited to matters pertaining to Primary Agriculture Credit Society but not to Fisherman Co-operative Society.

5. Learned counsel for the State and the State Election Authority support the contention of learned counsel for the



petitioners.

6. Having perused Rule 7(4) of the Rules, the Court finds substance in the submissions of learned counsel for the petitioners.

7. In view thereof, the writ application stands allowed. The order dated 22.02.2017 of the respondent no. 6 stands quashed. The concerned 388 members shall not be considered to be members and accordingly, would not be permitted to take part in the election to be held this year.

8. The Court is conscious that the said 388 persons are not before the Court and technically, may have been required to be heard. But in view of the fact that the order on law is patently without jurisdiction, the Court does not find the requirement to issue notice only as a mere formality because the order, purely on law, cannot be sustained, being completely beyond the competence and jurisdiction of the officer, who has passed such order. Thus, when the result is known, on a pure technicality, the Court does not deem it necessary to keep the matter pending.

9. The authority concerned is required to carry out the exercise to segregate the said 388 persons after verification from the concerned records.

10. However, before parting with the order, the Court would only observe that the said 388 persons shall be at liberty to



move before the appropriate/competent forum/authority, with regard to their grievance, of not being made members of the petitioner no. 2 Society. As and when the same is done, it shall be considered on its own merits, in accordance with law, after giving opportunity of hearing to all the parties concerned.

(Ahsanuddin Amanullah, J)

P. Kumar

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