

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.990 of 2018

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Pankesh Kumar Rai Son of Late Akhilesh Kumar Rai, Resident of Village- & P.O.-Lawapur Mahanar, P.S.-Mahnar, District-Vaishali at Hajipur (Bihar) at present Chairman PACS, Lawapur Mahnar Panchayat, Vaishali at Hajipur (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The District Magistrate, Vaishali at Hajipur.
4. The Managing Director, Central Cooperative Bank Vaishali at Hajipur.
5. The Sub Divisional Officer cum Returning Officer, Hajipur, Vaishali.
6. The District Cooperative Officer, Vaishali at Hajipur.
7. The Deputy Secretary, Bihar State Election Authority, 32, Harding Road, Patna-800001.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Amit Prakash, –GA-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-01-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Election Authority.

2. This writ petition has been filed by the petitioner for setting aside the order dated 09.01.2018 by which the nomination



of the petitioner for the post of Professional Director of the Co-operative Society has been rejected by the Returning Officer on the ground that he is representative of an affiliated society, which is in default in respect of loan taken by it.

3. It is submitted that the election is scheduled to be held tomorrow i.e. on 18.01.2018.

4. It would be pertinent to note here that Rule 23(2)(a) of the Bihar Co-operative Societies Rules, 1959 specifically bars the eligibility for the election to the Managing Committee in case of defaulters. It reads as under:-

“23(2) No delegate/representative of an affiliated society shall be eligible for election to the Managing Committee, if-

(a) the affiliated society is in default to the society in respect of any loan taken by it for such period as is prescribed in the bye-laws or in any case for a period exceeding three months or is in default to the society in respect of any other registered society on the date of filing of nomination.”

5. It is contention of the petitioner that the rejection of nomination of the petitioner for the post of Professional Director is wholly illegal, arbitrary and unjust.

6. A similar issue was raised before this Court in **C.W.J.C. No.15229 of 2017 (Md. Shamim vs. State of Bihar &**



Ors.)). This Court on consideration of the statutory provisions prescribed under Bihar Co-operative Societies Act, 1935, Bihar State Election Authority Act, 2008, Bihar Co-operative Societies Rules, 1959 and Bihar State Election Authority Rules, 2008 and placing reliance on the decisions of the Supreme Court in *N.P. Punnuswami Vs. Returning Officer & Ors.* [AIR 1952 SC 64], *Jyoti Basu Vs. Devi Ghosal* [(1982) 1 SCC 691], *K.K. Srivastava Vs. Bhupendra Kumar Jain & Ors.* [AIR 1977 SC 1703], *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra* [(2001) 8 SCC 509], *Mohinder Singh Gill Vs. Chief Election Commission* [(1978) 1 SCC 405] and *Shaji K. Joseph Vs. V. Vishwanath & Ors.* [2016 (2) PLJR SC 330], *Harcharan Singh Vs. S. Mohinder Singh & Ors.* [AIR 1968 SC 1500], *Banwari Dass Vs. Sumer Chand & Ors.* [(1974) 4 SCC 817], *Tapash Majumder & Anr. Vs. Pranab Dasgupta & Ors.* [(2004) 13 SCC 574], *The New Friends Co-operative House Building Society Ltd. Vs. Rajesh Chawla and Ors.* [(2004) 5 SCC 795], *Umesh Shivappa Ambi & Ors. Vs. Angadi Shekara Basappa & Ors.* [AIR 1999 SC 1566] and *Election Commission of India vs. Ashok Kumar* [(2000) 8 SCC 216], held that the issue of illegal rejection of nomination can only be challenged by way of filing election petition.



7. For the reasons recorded in **Md. Shamim vs. State of Bihar & Ors.** (supra), I am of the considered opinion that as the petitioner has an efficacious statutory remedy by way of filing an election petition for the rederssal of his grievance, it would not be proper for this Court to entertain an election dispute in the extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution of India.

8. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2018
Transmission Date	NA

