

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1100 of 2018

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1. Shashikant Mandal Son of Arbind Kumar Mandal Resident of Village-
Nayagaon Godiyashi, P.S. Parbata, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Government of Bihar, New Secretariat, Patna.
2. The Chief Election Officer Bihar State Election Authority, 32 Harding Road Patna 800001
3. The District Magistrate Cum District Election Officer Khagaria.
4. The District Fisheries Officer Khagaria.
5. The District Co-operative Officer Khagaria
6. The Prakhand Co-operative Officer Parbatta, District Khagaria..
7. The Block Development Officer Cum Election officer, Parbatta, Khagaria
8. The Secretary Parbatta Block Fisheries Society Namely Parbhudayal Sahani Son of late Dasharath Sahani Resident of Village Satisnagar, P.S. Pasraha, District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amresh Kumar Singh, Adv.
Mr. Anil Kumar Choudhary, Adv.
For the State : Mr. Arun Kumar Bhagat, Adv.
For the Election Authority: Mr. Mr. M. K. Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2018

This writ petition has been filed by the petitioner for a direction to the respondent authority for adding the name of 227 persons, who filled up forms for membership of Parbatta Block Fisheries Co-operative Society and further to allow them to participate in the election process.

2. At the outset, a preliminary objection has been raised by the learned counsel appearing for the Bihar State Election Authority. He submitted that the election of Parbatta Block Fisheries Co-



operative Society has already been notified and it is scheduled to be held on 23rd March, 2018 and, in that view of the matter, the writ petition would not be maintainable. In support of his submission, he has placed reliance on the decisions of the Supreme Court in *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra [(2001) 8 SCC 509]* and *Shaji K. Joseph Vs. V. Vishwanath & Ors. [2016 (2) PLJR SC 330]*. He has also submitted that so far as the issue of membership is concerned, the petitioner has an alternative remedy before the Registrar, Co-operative Society under Section 48 of the Bihar Co-operative Societies Act, 1935.

3. In reply to the objection raised by the learned counsel for the Bihar State Election Authority, learned counsel for the petitioner submitted that by way of I.A. No. 1656 of 2018 filed in the present writ petition, the petitioner has prayed for stay of the operation of election schedule notified vide Memo No. 159 dated 20.02.2018.

4. I have heard learned counsel for the parties and perused the record.

5. I find substance in the objection raised by the learned counsel for the Bihar State Election Authority. In *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra* (Supra), the Supreme Court has clearly held that the



principles of law relating to Representation of People's Act, 1951 shall extend to election of other Co-operative Society. In para-12 of the said judgment, the Supreme Court observed :

“In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll...”

6. In *Shaji K. Joseph Vs. V. Vishwanath & Ors.* (Supra), the issue before the Supreme Court was with regard to election of a member to the Dental Council of India under Section 3(a) of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952. The Supreme Court once again reiterated the settled law that once the process of election starts, no Court should interfere with the election process. It held that the High Court was not right in interfering with the process of election specially when the process of election had started upon publication of the election programme and more particularly when an alternative statutory remedy was available to the respondent by way of referring the dispute to the Central Government as per the provisions of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952.

7. In view of the availability of an equally efficacious



statutory remedy under Section 48 of the Bihar Co-operative Societies Act, 1935 in respect of addition of members of the Society, I am of the considered opinion that at this stage it would not be proper for this Court to issue any direction to the respondent authority in this regard. Further, in view of the aforestated decisions of the Supreme Court, I am of the opinion that it would also not be proper for this Court to stay the operation of the election schedule notified vide Memo no. 159 dated 20.02.2018.

8. In that view of the matter, the writ petition is dismissed. However, the petitioner would be at liberty to resort to other remedies available in law after the election process is over.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.03.2018
Transmission Date	

