

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1600 of 2017

IN

Civil Writ Jurisdiction Case No. 9546 of 2017

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1. Jamalpur Fisherman Cooperative Societies Ltd.
having its office at Khalasi Mohallah Jamalpur,
District- Munger through its Secretary Smt. Lalita
Devi,
2. Smt. Lalita Devi, wife of Shri Brahmdeo Mahto,
at present Secretary of the Jamalpur Fisherman Co-
operative Societies Ltd.

..... Appellant/s

Versus

1. The State of Bihar through the Principal
Secretary, Department of Co-operative Societies,
Bihar, Patna.
2. Bihar State Election Authority, 32, Harding
Road, Patna through its Election Officer.
3. Registrar, Co-operative Societies, Bihar, Patna.
4. District Co-operative Officer, Munger.
5. Block Development Officer-cum-Election Officer
(FCS), Jamalpur, District- Munger.
6. Dharhara Prakhand Matsyajeevi Sahyog Samiti
Ltd., Dharhara, District Munger having its office
at Dharhara, District- Munger through its Secretary
Pratap Narayan Chaudhary, son of Late Ramanand
Chaudhary, resident of Village- Barham, P.S.- Naya
Ram Nagar, District- Munger.

..... Respondent/s
with

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Letters Patent Appeal No. 1536 of 2017

IN

Civil Writ Jurisdiction Case No. 9546 of 2017

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1. Dharhara Prakhand Matsyajeevi Sahyog Samiti
Ltd., Dharhara, District Munger having its office
at Dharhara, District- Munger through its Secretary
Pratap Narayan Chaudhary, son of Late Ramanand
Chaudhary, resident of Village- Barham, P.S.- Naya
Ram Nagar, District- Munger.



..... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operative Societies, Bihar, Patna.
2. Bihar State Election Authority, 32, Harding Road, Patna through its Election Officer.
3. Registrar, Co-operative Societies, Bihar, Patna.
4. District Co-operative Officer, Munger.
5. Block Development Officer-cum-Election Officer (FCS), Jamalpur, District- Munger.
6. Jamalpur Fisherman Cooperative Societies Ltd. having its office at Khalasi Mohallah Jamalpur, District- Munger through its Secretary Smt. Lalita Devi,
7. Smt. Lalita Devi, wife of Shri Brahmdeo Mahto, at present Secretary of the Jamalpur Fisherman Co-operative Societies Ltd.

..... Respondent/s

with

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Letters Patent Appeal No. 979 of 2017

IN

Civil Writ Jurisdiction Case No. 5976 of 2017

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1. Jamalpur Prakhanda Matsayajivi Sahyog Samiti Ltd. Jamalpur through its Secretary/ Koshu Adhayaksh (Treasurer Mrs. Lalita Devi Wife of Mahto Resident of Village- Khalashi Mohalla-Jamalpur, P.O. Jamalpur, P.S.-Jamalpur, District-Munger.

..... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Cooperative Department, Bihar, Patna.
2. The Bihar State Election Authority through Chief Election Officer, 32, Harding Road, Patna-800001,
3. The District Magistrate-Cum-District Election Officer, Munger
4. The Registrar, Co-operative Societies, Bihar, Patna.
5. The Deputy Registrar (Cane) Co-operative



Societies, Bihar, patna.

6. The District Co-operative Officer, Munger,
7. The Block Development Officer-Election Officer, Dharahara Prakhand Matsyajivi Sahyog Samiti Ltd. Dharahara, P.s. Dharahara, Distt. Munger.
8. The Block Development Officer-cum-Election Officer, Jamalpur Prakhand Matsyajivi Sahyog Samiti Ltd. Jamalpur, P.S. jamalpur, Distt. Munger.
9. Dharahara Prakhand Matsyajivi Sahyog Samiti Ltd. Dharahara, through its secretary Pratap Narain Choudhary Son of Late Ramanand Choudhary, Resident of Village- Parham, P.S. Farda, Distt. Munger
10. Premjeet Kumar Son of shri Dhurub Narain Choudhary, Resident of Village- Parham, P.C. Farda, P.S.- Naya Ram Nagar, District-Munger,
11. Ram Bahadur Choudhary Son of Late Bhato Choudhary, Resident of Village- Purub Tola, Farda, P.O. Farda, P.S. Naya Ram Nagar, District-Munger.
12. Dheero Choudhary Sono f Late Budhu Choudhary, Resident of Village- Parham, P.O. Farda, P.S. Naya Ram Nagar, District-Munger.
13. Jawahar Choudhary Son of Phulee Choudhary, Resident of Village- Parham, P.O. Farda, P.S. Naya Ram Nagar, District-Munger.
14. Shambhu Choudhary Son of Late Ambika Choudhary, Resident of Village- Purbi Tola Farda, P.C. Farda, P.S. Naya Ram Nagar, District-Munger.

..... Respondent/s

Appearance :

(In LPA No.1600 of 2017)

For the Appellant/s : Mr. Sanjay Singh, Adv.
: Mr. Praveen Kumar, Adv.
: Mr. Ram Nibash Prasad, Adv.

For the Respondent-State: Mr. Ashok Kumar Dubey, A.C. to AAG-11

(In LPA No.1536 of 2017)

For the Appellant/s : Mr. Anita Kumari
For the Respondent-State: Mr. Ashok Kumar Dubey, A.C. to AAG-11

(In LPA No.979 of 2017)

For the Appellant/s : Mr. Shambhu Sharan Singh, Advocate
For the Respondent-State: Mr. Ashok Kumar Dubey, A.C. to AAG-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date: 26-09-2018

As common question of law and facts arise in these Letters Patent Appeals, these Appeals are heard, decided and disposed of together by this common judgment and order.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 04.10.2017 passed in C.W.J.C. No. 9546 of 2017, by which the learned Single Judge has allowed the said petition, newly elected body of the original writ petitioner No.1-Jamalpur Fisherman Co-operative Societies Ltd. as well as the original respondent No.6-Dharhara Prakhn Matsyajeevi Sahyog Samiti Ltd. have preferred the present Letters Patent Appeal No. 1600 of 2017 as well as L.P.A. No.1536 of 2017.

1.1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 28.06.2017 passed in C.W.J.C. No. 5976 of 2017, by which the learned Single Judge has disposed of the said writ petition, the original-respondent No.10-Jamalpur Prakhn Matsyajivi Sahyog Samiti Ltd. Jamalpur, has preferred the Letters Patent Appeal being L.P.A. No. 979 of 2017.

2. The facts leading to the present Letters Patent Appeals, in nutshell, are as



under;

2.1. At the outset, it is required to be noted that the dispute is with respect to the election of one Jamalpur Fisherman Co-operative Societies Ltd. (hereinafter referred to as the 'Society'). That 495 members of the original-respondent No.6- Dharhara Prakhand Matsyajeevi Sahyog Samiti Ltd. (hereinafter referred to as the 'Society') were transferred to the original writ petitioner No.1- Jamalpur Fisherman Co-operative Societies Ltd. and they became members of the said Society. That the said decision came to be upheld by the District Co-operative Officer, Munger. That the election of the members of the Managing Committee of original petitioner No.1- Society was declared. The voter's list was prepared, in which, the aforesaid 495 members were included in the voter's list of the original writ petitioner No.1-Society. Therefore, the original writ petitioner No.1-Society through its Secretary, Smt. Lalita Devi, preferred C.W.J.C. No. 9546 of 2017 before this Court for an appropriate writ/order for quashing and setting aside the order passed by the District Co-operative Officer, Munger dated 18.05.2017, confirming the resolution passed by the original-respondent No. 6- Dharhara Prakhand Matsyajeevi Sahyog Samiti Ltd. for transferring of 495 members to the original



writ petitioner No.1-Society. The original writ petitioner No.1-Society prayed for an appropriate writ /order quashing and setting aside the follow up action of inclusion of the aforesaid 495 persons in the voter's list of the original-writ petitioner No.1-Society.

2.3. It is required to be noted that the said petition was filed on 07.07.2017, however, before any further order could be passed, the election of members of the Managing Committee of the original petitioner No.1-Society was held on 11.07.2017 and the newly elected body came into existence and therefore, the original writ petitioner, as such, filed Interlocutory Application No. 5042 of 2017 with a prayer to add newly elected body as party respondents. However, the learned counsel appearing on behalf of the respective parties agreed that without going into the prayer made in the said Interlocutory Application, the main petition be heard and therefore, the learned Single Judge proceeded further with hearing of the main writ petition without granting the reliefs sought in Interlocutory Application No. 5042 of 2017 and without even joining the newly elected body.

2.4. At this stage, it is required to be noted that in I.A. No. 5042 of 2017, the original writ petitioner also proposed to amend the petition by adding the prayer to



quash and set aside the election of members of the Managing Committee, who came to be elected on 11.07.2017. However, from the order dated 16.08.2017, it appears that no further order was passed in the said I.A. No. 5042 of 2017 meaning thereby, neither the newly elected members of the Managing Committee of the original writ petitioner No.1-Society were joined as party-respondents in the main writ petition nor even the petition was amended adding the prayer to quash and set aside the election held on 11.07.2017.

2.5. That thereafter by the impugned judgment and order, the learned Single Judge has quashed and set aside the action of the original respondent No.6-Society in transferring its 495 members to the original writ petitioner No.1-Society and also quashed and set aside the order passed by the District Co-operative Officer, Munger, upholding the resolution of the original respondent No.6-Society transferring its 495 persons/members to the original-petitioner No.1-Society and consequently, quashed and set aside the inclusion of aforesaid 495 members in the voter list of original writ petitioner No.1-Society and consequently also quashed and set aside the subsequent election of members of the Managing Committee of original writ petitioner No.1-Society.



2.6. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the original respondent No. 6-Society as well as the original-petitioner No.1- Society (now through its newly elected Secretary)-Ranjana Devi have preferred the Letters Patent Appeal No. 1600 of 2017 and Letters Patent Appeal No. 1536 of 2017.

2.7. It appears that one another petition being C.W.J.C. No. 5976 of 2017 was preferred by some of the members, whose names were not included in the voter list and considering the order dated 18.05.2017 passed by the District Co-operative Officer, Munger (which, as such, has been quashed and set aside by the learned Single Judge by the judgment and order dated 04.10.2017 passed in C.W.J.C. No. 9546 of 2017), the learned Single Judge has disposed of the said writ petition by observing that as the District Co-operative Officer, Munger has already passed the order dated 18.05.2017, by which District Co-operative Officer, Munger has directed the Returning Officer to include the name of 495 persons (including the original writ petitioner No. 1 of C.W.J.C. No. 5976 of 2017) in the voter list of *Jamalpur Prakhanda Matsyajivi Sahyog Samiti Ltd*, the grievance of the petitioners has been redressed.



2.8. Feeling aggrieved and dissatisfied with the order passed by the learned Single Judge passed in C.W.J.C. No. 5976 of 2017, the original-respondent No. 10- Jamalpur Prakhanda Matsyajivi Sahyog Samiti Ltd. through its earlier Secretary, Lalita Devi, has preferred the Letters Patent Appeal No. 979 of 2017.

3. Sri Sanjay Singh, learned Advocate has appeared on behalf of the appellants and Sri Ashok Kumar Dubey, learned Assisting Counsel to Additional Advocate General-11 has appeared on behalf of the respondents-State as well as Sri Shambhu S.N. Prasad, learned counsel has appeared on behalf of respondent Nos. 6 and 7 herein- original writ petitioners.

4. Learned counsel appearing on behalf of the respective appellants have vehemently submitted that in the facts and circumstances of the case, the learned Single Judge has materially erred in entertaining the petition which as such was an election dispute, and has materially erred in not only quashing and setting aside the voter list but also quashing and setting aside the election of the newly elected members of the Managing Committee.

4.1 It is vehemently submitted by Sri Sanjay Singh, learned counsel appearing on behalf of the appellants that as before challenging, in the main writ petition, the



inclusion of the name of 495 members in the voter list of the original writ petitioner No.1-Society, the learned Single Judge ought not to have entertained the petition and/or ought to have relegated the original writ petitioner No.1-Society to approach the appropriate authority. It is further submitted that even otherwise without any specific reliefs/prayer sought in the main petition and without even amending the petition challenging the subsequent election, the learned Single Judge has materially erred in quashing and setting aside the election of the members of the newly constituted Committee. It is further submitted that even otherwise, the learned Single Judge has materially erred in directing to delete the names of 495 members from the voter list of Jamalpur Fisherman Co-operative Societies Ltd. without giving an opportunity to those persons whose names were ordered to be deleted from the voter list. It is further submitted that, therefore, the impugned judgment and order passed by the learned Single Judge directing to exclude the names of those 495 members from the voter list, is bad in law and against the principles of natural justice and the same deserves to be quashed and set aside.

4.2. It is further submitted by Sri Sanjay Singh, learned counsel appearing for the



appellants that even though an Interlocutory Application was filed by the original writ petitioner No.1-Society permitting them to add the newly elected members of the Management Committee as party and to amend the petition challenging the election of the newly constituted Management Committee, without passing any order in the said Interlocutory Application and without even joining the newly elected members and without any relief sought in the main petition challenging the election, the learned Single Judge has materially erred in quashing and setting aside the election of the newly constituted Management Committee. It is further submitted that therefore, the reliefs, which are granted by the learned Single Judge, are beyond the reliefs sought in the main writ petition.

4.3. It is further submitted by Sri Sanjay Singh, learned counsel appearing for the appellants that even on merits also, the learned Single Judge has materially erred in holding that those 495 persons were wrongly transferred to the original writ petitioner No.1-Society and thereby, they were included in the voter list of Jamalpur Fisherman Co-operative Societies Ltd. For the aforesaid, the learned counsel appearing on behalf of the respective appellants has taken us to the relevant provisions of Bihar Co-operative



Societies Act.

4.4. Making above submissions, it is requested to allow the present Letters Patent Appeals.

5. The present appeals are opposed by Sri Shambhu S.N. Singh appearing on behalf of the original writ petitioners. It is vehemently submitted by Sri Shambhu S.N. Singh appearing on behalf of the original writ petitioners-respondent Nos. 6 and 7 herein that in the facts and circumstances of the case and having found that 495 members/persons of Dharhara Prakhand Matsyajeevi Sahyog Samiti Ltd. were wrongly transferred to Jamalpur Fisherman Co-operative Societies Ltd. and thereby, they were wrongly included in the voter list of Jamalpur Fisherman Co-operative Societies Ltd, the learned Single Judge has rightly interfered with the same and has rightly observed and held that those 495 persons were wrongly included in the voter list and thereby, the learned Single Judge has rightly quashed and set aside the entire election based on the invalid voter list.

5.1. It is further submitted by Sri Shambhu S.N. Singh, learned counsel appearing on behalf of the original writ petitioners-respondent Nos. 6 and 7 herein that as such there is no provision in the Co-operative Societies Act to transfer the members from one



society to another Society. It is also submitted that the transfer of those 495 persons to the Jamalpur Fisherman Co-operative Societies Ltd. was absolutely illegal and therefore, the same is rightly quashed and set aside by the learned Single Judge.

5.2. It is further submitted by Sri Shambhu S.N. Singh, learned counsel appearing on behalf of the original writ petitioners that as the election of the newly elected members was subsequently held during the pendency of the writ petition, the principle of *lis pendens* shall apply and therefore, those newly elected members are not required to be heard. It is further submitted that therefore, merely on the ground that those newly elected members were not heard, the judgment and order passed by the learned Single Judge is not required to be set aside.

5.3. It is further submitted by Sri Shambhu S.N. Singh, learned counsel appearing on behalf of the original writ petitioners that even otherwise, as such, the original writ petitioners moved an Interlocutory Application permitting them to make them party by joining the newly elected members and also to exclude their names from voter list challenging the election. However, the learned counsel appearing on behalf of the respective parties requested to hear the main petition



without considering the Interlocutory Application and, therefore, the learned Single Judge has proceeded with hearing the main petition without considering the Interlocutory Application.

5.4. It is further submitted that, therefore, now it will not be open for the appellants to contend that in absence of any relief sought in the petition challenging the new election, the learned Single Judge ought not to have granted such relief.

5.5. Learned counsel appearing on behalf of the original writ petitioners has also heavily relied upon the decision of the Hon'ble Supreme Court in the case of ***The Chief Commissioner of Ajmer and another, Vs. Radhey Shyam Dani*** reported in ***AIR 1957 SC 304*** and in support of his submission that the essence of the election that proper electoral rolls should be maintained and therefore, if the electoral roll found to be invalid and illegal, the election based on such electoral roll, is required to be set aside.

5.6. Learned counsel appearing on behalf of the original writ petitioners has also relied upon the another decision of the Hon'ble Supreme Court in the case of ***M/s A.S. Motora Pvt. Ltd. Vs. Union of India & Ors.*** reported in ***2013(3) PLJR 308 SC***. In support of his submission that the principles of natural



justice are not rigid or embodied rules capable of being put in a straightjacket, it is *de horse* of natural justice depending upon the various factors. It is further submitted that in the facts and circumstances of the case, when the Secretary of the Society was heard and even the learned counsel appearing on behalf of the Society was heard, all those 495 members of the Society were not required to be heard. It is further submitted that the impugned judgment and order passed by the learned Single Judge cannot be said to be in violation of the principles of natural justice, as alleged.

5.7. Making above submissions and relying upon the above decisions, it is requested to dismiss the present Letters Patent Appeals.

6. Heard learned counsel appearing on behalf of the respective parties at length. Perused and considered the impugned judgment and order passed by the learned Single Judge as well as the relevant materials on record.

7. At the outset, it is required to be noted that what was challenged before the learned Single Judge, was inclusion of name of 495 members, who were originally the members of Jamalpur Prakhanda Matsyajivi Sahyog Samiti Ltd., in the Jamalpur Fisherman Co-operative Societies Ltd., therefore, as such what was challenged was the voter list of Jamalpur



Fisherman Co-operative Societies Ltd. That by the impugned judgment and order, the learned Single Judge has held that those 495 members were wrongly entered into Jamalpur Fisherman Co-operative Societies Ltd. and thereby, has directed to exclude the names of those 495 members from the voter list of Jamalpur Fisherman Co-operative Societies Ltd. as the election of the Managing Committee was held after the writ petition was filed on the basis of the voter list, which came to be quashed and set aside by the impugned judgment and order passed by the learned Single Judge. The learned Single Judge has also quashed and set aside the election of the newly constituted Managing Committee.

8. However, it is required to be noted that no opportunity of hearing had been given to those 495 members/persons whose names were included in the voter list and whose names were directed to be deleted from the voter list of Jamalpur Fisherman Co-operative Societies Ltd. Even those 495 persons were not joined as party to the main writ petition. While directing to delete the names of those 495 members/persons from the voter list of Jamalpur Fisherman Co-operative Societies Ltd., it could not be disputed that those 495 members/persons are directly affected. All those 495 members/persons whose names were



ordered to be deleted from the voter list and their names were ordered to be excluded from the voter list, therefore, they are required to be given an opportunity of hearing before passing any adverse order against them. Therefore, as such, the impugned judgment and order passed by the learned Single Judge holding that those 495 members/persons were wrongly included in the voter list of Jamalpur Fisherman Co-operative Societies Ltd. is clearly in breach of principles of natural justice and therefore, the same is not sustained and deserves to be quashed and set aside.

9. It is required to be noted that even by the impugned judgment and order, the learned Single Judge has also quashed and set aside the subsequent election of the newly elected Managing Committee of Jamalpur Fisherman Co-operative Societies Ltd. However, it is required to be noted that the election of the newly elected members of the Society had been set aside without giving any opportunity of hearing to them though an Interlocutory Application was filed by the original writ petitioners-Society permitting them to join those newly elected members as party. However, from the order dated 16.08.2017, it appears that the learned Advocate appearing on behalf of the respective



parties submitted before the learned Single Judge that the matter may be heard and disposed of without considering the Interlocutory Application. Therefore, the learned Single Judge has proceeded further with hearing of the main writ petition without considering the Interlocutory Application. However, the fact remains that those newly elected members are not joined as party and the election has been set aside without giving them any opportunity of hearing.

10. At this stage, it is required to be noted that those who gave the concession and have stated before the Court that the petition be heard without considering the Interlocutory Application were the earlier Secretary of the Society-the original writ petitioners. In any case, such concession shall not be binding to the newly elected members. They are required to be heard before their election is set aside. Therefore also, the impugned judgment and order passed by the learned Single Judge cannot be sustained as the same is in violation of principles of natural justice.

11. It is also required to be noted that in the main petition, the only relief sought was to set aside the order passed by the District Co-operative Officer and to set aside the voter list and also inclusion of the names of 495 members/persons in the voter list of



Jamalpur Fisherman Co-operative Societies Ltd. Though, an Interlocutory Application was preferred permitting the original writ petitioners to amend the main petition challenging the subsequent election, the same was granted and no order was passed on Interlocutory Application. The fact remains that the main petition was not amended challenging the subsequent election and thereby, there was no prayer in the petition for quashing and setting aside the subsequent election. Therefore, the relief, which is granted by the learned Single Judge quashing and setting the subsequent election, is beyond the relief sought in the main petition. On the aforesaid ground, the impugned judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

12. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of **Radhey Shyam Dani (supra)** by the learned counsel appearing on behalf of the original writ petitioners is concerned, there cannot be any dispute with respect to the proposition of the law laid down by the Hon'ble Supreme Court in the said decision. However, the impugned judgment and order passed by the learned Single Judge is required to be quashed and set aside for the reasons stated hereinabove.



13. Now, so far as the reliance placed on the decision of the Hon'ble Supreme Court in the case of **M/s A.S. Motora Pvt. Ltd (supra)** by the learned counsel appearing on behalf of the original writ petitioners is concerned, we are of the opinion that in the facts and circumstances of the case, the same shall not be of any assistance to the original writ petitioners. As observed herein above, the impugned judgment and order passed by the learned Single Judge is absolutely in violation of the principles of natural justice and the impugned judgment and order has been passed by the learned Single Judge without giving any opportunity to those 495 members/persons whose names were ordered to be deleted from the voter list and even the election of the newly constituted Managing Committee has been set aside without giving any opportunity of being heard to them.

14. In view of the above and for the reasons stated above, the Letters Patent Appeal No. 1600 of 2017 and Letters Patent Appeal No. 1536 of 2017 are hereby Allowed and the impugned judgment and order passed by the learned Single Judge passed in C.W.J.C. No. 9546 of 2017 is hereby quashed and set aside.

15. In view of the order passed in Letters Patent Appeal No. 1600 of 2017 and Letters Patent Appeal No. 1536 of 2017, no



order in Letters Patent Appeal No. 979 of 2017.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
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