

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17899 of 2017**

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Mahavir Singh Son of late Sri Sita Ram Singh Resident of Borbara, P.O. Bhatauna,  
P.S. Karza District- Muzaffarpur, at Present Chairman of Bahtauni PACS, Block  
Madban Muzaffarpur.

.... .... Petitioner

Versus

1. The Chief Secretary, Govt. of Bihar.
2. The State of Bihar through its Principal Secretary, Co-operative Department,  
Govt. of Bihar, Patna.
3. The Registrar, Co-operative Society, Bihar, Patna
4. The Bihar State Election Authority, Harding Road, Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Shashi Kant 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: 25-07-2018**

The prayer of the petitioner in the instant writ petition  
are as under :-

“(i) To direct the respondent no. 1 to amend  
Bihar Co-operative Society Rules, 1959 along  
with Bihar co-operative Societies Act to bring in  
conformity with the Amended Bihar co-operative  
Societies Act, 1935 which has taken place after  
the 97<sup>th</sup> amendment of the constitution.

(2) To further direct to amend Bye laws of PACS  
to bring in conformity with Bihar Co-operative  
Societies Rules 1959 so amended for proper and  
smooth functioning of Primary Agriculture Co-



operative Societies.

(3) To further direct that unless these changes takes place no election of Primary Agriculture Co-operative Societies or Any Co-operative Society shall take place.

(4) To any other relief or relief for which the petitioners are found to be entitled in the facts and circumstances of the case.”

2. Earlier the petitioner had filed CWJC No. 18273 of 2016 as PIL for the reliefs prayed for in the present writ petition, which was dismissed as withdrawn vide order dated 19.04.2017 as contained in Annexure-1.

3. In view of the order as contained in Annexure-1, learned counsel for the State has raised a preliminary objection regarding maintainability of the writ petition. He has submitted that while withdrawing the writ petition, no permission was granted to the petitioner to file a fresh writ petition. Hence, the petitioner cannot file another petition in the same subject matter. In this regard, he has placed reliance on the ratio laid down by the Supreme Court in **Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P.,Gwalior & Ors. [AIR 1987 SC 88]**.

4. Replying to the preliminary objection raised by the



State, learned counsel for the petitioner submitted that since the earlier writ petition was not decided on merits, principles of *res-judicata* shall not apply. Hence, the writ petition is maintainable.

5. Having heard the parties and perused the order as contained in Annexure-1 to the writ petition, I am of the considered opinion that the present writ petition is not maintainable.

6. In **Sarguja Transport Service** (Supra), the Supreme Court considered a similar issue and held that there would be no justification to permit a person to invoke extra-ordinary jurisdiction under Article 226 of the Constitution if at the time of withdrawal of the case permission to file writ petition again has not been granted. The observations made by the Supreme Court in this regard are as under :-

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under [Article 226](#) of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata*



but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under [Article 226](#) of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under [Article 32](#) of the Constitution since such withdrawal does not amount to res judicata, the remedy under [Article 226](#) of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under [Article 21](#) of the Constitution since such a case stands on a



different footing altogether. We, however, leave this question open.”

7. In **Deb Narayan Shyam & Ors. vs. State of W. B. & Ors. [(2005) 2 SCC 286]**, the Supreme Court yet again approved the law laid down in **Sarguja Transport Service** (Supra).

8. Thus, as the earlier writ petition filed by the petitioner was dismissed by a Division Bench as withdrawn without liberty to file a fresh writ petition, in the opinion of this Court a second writ petition on the same cause of action and the same facts would not be maintainable irrespective of the principle of *res-judicata* and such ban would be on the principle of public policy.

9. Furthermore, since the petitioner has not challenged the constitutionality of the Bihar Co-operative Societies Rules, no relief as prayed in the instant writ petition can be granted to him.

10. Accordingly, the writ petition is dismissed.

**(Ashwani Kumar Singh, J.)**

Kanchan/SkSuman.

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