

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6081 of 2015

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Lalan Choudhary, Son of Late Narayan Choudhary, Resident of village - Bardaha,
P.S.- Sirdala, District - Nawadah.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department,
Government of Bihar, Patna.
2. The Joint Registrar, Cooperative Societies, Magadh Division, Gaya.
3. The District Cooperative Officer, Nawadah.
4. The Election Officer (Cooperative Societies)-cum-the Block Development
Officer, Sirdala Block, District - Nawadah.
5. The Block Cooperative Extension Officer, Sirdala Block, District - Nawadah.
6. Arvind Kumar Pandit, son of Tulshi Pandit, Resident of village - Mahgai, P.S.-
Sirdala, District - Nawadah.
7. Krishan Mohan Yadav, Son of Late Baldeo Yadav, Resident of village -
Menpur, P.S.- Sirdala, District - Nawadah.
8. Sandh Majhgawan Primary Agriculture Credit Cooperative Society Ltd. Block
+ P.S.- Sirdala, District - Nawadah.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Jha, Advocate
For the Respondent-State : Mr. Birju Prasad, GP-13
Mr. Ravi Kumar, AC to GP-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2018

Heard learned counsel for the petitioner and learned
Government Pleader No.13 for the State.

2. This writ petition has been filed by the petitioner for
setting aside the order dated 21.02.2015/28.02.2015 as contained in
Annexure-7 to the writ petition passed by the Joint Registrar,
Cooperative Societies, Magadh Division, whereby and whereunder



election of the petitioner to the post of Chairman of Sandh Majhgawan Primary Agricultural Co-operative Credit Society (for short 'PACCS') has been declared invalid in terms of Section 12(1)(d) of the Bihar State Election Authority Act, 2008 and further one Yugal Prasad Yadav was declared elected on the same post in terms of Section 13 of the aforementioned Act on the ground that he was runner up in the election under reference.

3. At the outset, it is pointed out that though the aforesaid Yugal Prasad Yadav was originally impleaded, as respondent no.6 in the writ petition, during pendency of the writ petition, he died. Hence, his name has been deleted from the cause title with the permission of the Court and the party position has been rearranged.

4. The ground on which the election of the petitioner was declared invalid by the impugned order was that he was not a shareholder/member of the PACCS in question and as per bye-laws of the PACCS if a person purchased a share, then only he was entitled to contest the election of PACCS i.e. after becoming a shareholder.

5. Though, the petitioner has made several submissions while assailing the order impugned, this Court does not deem it necessary to deal with all those points in view of the ratio laid down



by this Court in **Katra Prakhand Matashayajivi Sahyog Samiti Ltd. and Ors. vs. State of Bihar & Ors. [2015(4) PLJR 359]** wherein it has been held that though Assistant Registrar exercises power of the Registrar but such power could only be exercised upon transfer of such matter by the Registrar under Section 48(2) of the Bihar Co-operative Societies Act, 1935 (for short 'the Act'). Learned counsel for the State also admits that the law laid down by this Court in the aforesaid judgment still holds good.

6. In the instant case, the order impugned has been passed by the Joint Registrar, Co-operative Societies, Magadh Division, Gaya. From a perusal of Annexure-1 to the writ petition, it would be manifest that the election dispute was directly filed in the court of Joint Registrar, Co-operative Societies, Magadh Division, Gaya. The fact that an election dispute was directly filed in the court of Joint Registrar has not been disputed even by the respondent-State.

7. Thus, the question would be as to whether an election dispute, which was directly filed in the Court of Joint Registrar and decided by him, can be held to be legal and valid.

8. Section 6(1) of the Act defines Registrar, and includes all such persons who are duly authorized in this regard by the State under a notification published in this regard.



9. Section 48 of the Act empowers the Registrar to adjudicate on any dispute touching the business of a registered society on a reference made in this regard. It also confers power of delegation on the Registrar to any authority exercising powers of a Registrar as notified by the State Government under Section 6(1) of Act.

10. Clause (2) of Section 48 provides that the Registrar may on receipt of such reference either decide the dispute himself or transfer it for disposal to any person exercising the powers of a Registrar in his behalf or subject to any rules refer it for disposal to an arbitrator or arbitrators.

11. It is not in dispute that the Joint Registrar like the Assistant Registrar has been notified by the State Government to exercise power of Registrar under section 6(1) of the Act. Under the similar circumstance, when the Assistant Registrar had *suo motu* exercised such power on an application made to him directly by an aggrieved member of a society, this Court in **Katra Prakhand Matashayajivi Sahyog Samiti Ltd. (supra)** held the order passed by the Assistant Registrar to be patently illegal, as the same suffered from vice of quorum non judice.

12. In the said case, this Court held that the Assistant Registrar though exercises power of the Registrar but, such power



can only be exercised upon transfer of such matter by the Registrar under Section 48(2) of the Act and no any other circumstance. This Court further held that the principle that where a statute prescribes a mode and manner of performing any act, it has to be done in that manner alone and all other modes are strictly forbidden.

13. Since there is no dispute as far as the question of law is concerned, in view of the ratio laid down by this Court in **Katra Prakhanda Matashayajivi Sahyog Samiti Ltd. (supra)**, the order impugned dated 21.02.2015/28.02.2015 passed by the Joint Registrar in a dispute directly filed in his court without being referred by the Registrar under Section 48(2) of the Act cannot be sustained.

14. Resultantly, the impugned order is set aside.

15. The application stands allowed.

16. The petitioner shall be restored as Chairman of Sandh Majhgawan PACCS.

(Ashwani Kumar Singh, J.)

Sanjeet/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2018
Transmission Date	NA

