

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3193 of 2016

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Md. Anwar Khan Son of Late Abdul Kasim Khan, resident of Village and Post -
Dihuri, P.S. - Atari, District -Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Co-operative Department, Govt. of Bihar.
2. The State Election Authority, Bihar, Patna.
3. The Joint Registrar, Co-operative Society, Magadh Division, Gaya.
4. The District Co-operative Officer, Gaya.
5. The District Magistrate - cum - Election Officer (PACS) Gaya.
6. The Block Development Officer - cum - Returning Officer, Block Atri, District - Gaya.
7. Md. Samsuddin, Son of Late Rahman Khan, Resident of Village and Post - Dihuri,P.S. - Atri, District - Gaya.
8. The Branch Manager, Magadh Co-opertive Bank ltd., Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate.
For the State : Mr. Gyan Prakash Ojha, GA-7
Mr. Gopal Krishna, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-06-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Despite valid service of notice to the respondent no. 7,
he has chosen not to appear before the Court either in person or
through counsel.



3. The instant writ petition has been filed by the petitioner for quashing the order dated 14.02.2015 passed by the learned Joint Registrar, Co-operative Society Magadh Division, Gaya in Election Dispute Case No. 09 of 2014-15 whereby the election of the petitioner as the Chairman of Dihuri Primary Agriculture Credit Society (for short 'PACS') has been declared invalid on the ground of being defaulter in terms of Rule 23(1)(b) of the Bihar Co-operative Societies Rules, 1959 (for short 'Rules') and the respondent no. 7 has been declared Chairman of the Dihuri PACS.

4. It is submitted by the learned counsel for the petitioner that there was no evidence on record to suggest that the petitioner was in default to the Society in respect of any loan taken by him or in default to the Society in respect of any other dues or in default of any other registered society on the date of filing of his nomination. He submitted that in absence of any legal evidence merely on oral allegation made by respondent no. 7, the election of the petitioner on the post of Chairman of the Dihuri PACS could not have been declared invalid. He submitted that till date, it has not been established before any forum that the petitioner was a defaulter to the Society or any other registered society rather the concerned co-operative bank has given no dues certificate in his favour. He submitted that the learned Joint Registrar has erroneously held the



petitioner to be a defaulter. He also contended that even otherwise, order impugned has been passed in complete breach of mandatory provisions prescribed under Section 10(2)(a) of the Bihar State Election Authority, 2008 (for short 'the Act of 2008'). The respondent no. 7 could not have been declared Chairman of the PACS in absence of other contesting candidates having been impleaded as respondents to the election petition.

5. On the other hand, learned counsel for the State submitted that the writ petition is misconceived. He submitted that the learned Joint Registrar after appreciating the evidence properly has rightly come to a conclusion that the petitioner was a defaulter on the date of his nomination and had obtained a false no dues certificate from the Magadh Central Co-operative Bank. According to him, his election on the post of Chairman has rightly been declared to be invalid. However, he admitted that as far as the contention of the petitioner that if respondent no. 7 was claiming a declaration that election of the returned candidate be declared invalid and was further claiming a declaration that he should be declared elected, it was incumbent for him to implead all the contesting candidates other than himself as respondents to the election petition in terms of Section 10(2)(a) of the Act of 2008.

6. I have heard learned counsel for the parties and carefully



perused the record.

7. The case of the petitioner is that a notification for election of Dihuri PACS was issued by the State Election Authority, Bihar Patna in the year 2014. As per notification, the petitioner filed his nomination before respondent no. 6 and the same was found in order on scrutiny made by the Returning Officer. Thereafter, he was allowed to contest the election for the post of Chairman of Dihuri PACS. After completing the entire election process on 21.10.2014, he was declared winner and respondent no. 7 was runner in that election. Against the result so declared in the said election, Election Dispute Case No. 09 of 2014-15 was filed by respondent no. 7 before the learned Joint Registrar, Co-operative Society, Magadh Division, Gaya. The respondent no. 7 had impleaded the Manager of Dihuri PACS, the Election Officer-cum-Block Development Officer, Atri and the petitioner as respondents to the election petition.

8. It has been submitted by the learned counsel for the petitioner that apart from the petitioner and respondent no. 7, there were two other contesting candidates for the post of Chairman of Dihuri PACS.

9. In the election petition, it was alleged by the respondent no. 7 that the petitioner being a loanee of the PACS had taken loan in the year 1992-93 and the same had not been returned. Hence, in



view of the provisions prescribed under Rule 23(1)(b) of the Rules, the petitioner was not eligible for election to the Managing Committee as he was in default to the society.

10. At this stage, it would be relevant to extract the provisions prescribed under Rule 23(1)(b) of the Rules, which reads as under :-

“23. (1) No person shall be eligible for election to the Managing Committee, if –

(a) xx xx xx

(b) he is in default to the society in respect of any loan taken by him for such period as in 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 dues or is in default to any other registered society on the date of filing of nomination.”

11. Thus, Rule 23(1)(b) of the Rules provides for ineligibility of a person, who is in default of the Society in respect of any loan taken by him or in default to the Society in respect of any other dues or in default of any other registered society on the date of filing nomination.

12. Further, Section 10(2)(a) of the Act of 2008 reads as under:-

“10. Election Petition. - (1)(i) The election to



any office of a body shall not be called in question except by an election petition as prescribed:

xx xx xx

(2) *Parties to the petition.* - A petitioner shall join as a respondent to this petition-

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) xx xx xx.”

13. Thus, it would be manifest that Section 10(2)(a) of the Act of 2008 provides that if a declaration is sought that declaration of any returned candidate is void and in his place the petitioner or any other candidate be declared elected then all the contesting candidates other than the petitioner should be impleaded as respondents.

14. It would be manifest from perusal of the impugned order that the petitioner contested the claim of respondent no. 7 before learned Joint Registrar. His contention was that on the date of



nomination, he was not in default either to the society in respect of any loan taken by him or in default of any other dues or in default to any other registered society. He had produced no dues certificate granted by the Magadh Co-operative Bank in his favour in which it was clearly mentioned that as per available record, there is no personal dues or dues of KCC against the petitioner.

15. I find from the record that save and except the ocular allegation made by respondent no. 7 which was contested by the petitioner, there was absolutely no material before the learned Joint Registrar to come to a finding that the petitioner was a defaulter. No other oral or documentary evidence was adduced by the respondent no. 7 in the proceedings of the election case. The impugned order does not reflect the reason for coming to the finding that the petitioner was a defaulter. Hence, the finding of the learned Joint Registrar is unsustainable. He has also committed a serious error of law in declaring the respondent no. 7 as Chairman of the PACS after holding the election of the petitioner on the said post invalid. In my considered opinion, no relief could have been granted to the respondent no. 7 by the learned Joint Registrar even if the election of the petitioner on the post of Chairman was declared to be void in view of Section 10(2)(a) of the Act of 2008, as it was incumbent upon respondent no. 7 to have impleaded all the contesting



candidates other than himself as party respondent to the election petition for such additional relief. Apparently, other candidates were not made party to the election petition filed by the respondent no. 7. In absence of all the contesting parties as respondents to the election petition, while passing the order impugned, learned Joint Registrar has completely erred in law in declaring respondent no. 7 elected as Chairman after invalidating the election of the petitioner to the said post.

16. In view of the discussions made above, the order impugned cannot be sustained. Accordingly, order dated 31.01.2015/14.02.2015 passed by the learned Joint Registrar, Co-operative Society, Magadh Division, Gaya in Election Dispute Case No. 09 of 2014-15 is set aside. Consequently, the petitioner shall be treated to be Chairman of PACS in question.

17. The writ petition stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2018
Transmission Date	NA

