

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4948 of 2016

=====

Pratima Singh, W/o Late Anand Pratap Singh, Vill- Kauwa Khap, P.O.- Kona, P.S.-
Rafiganj, District- Aurangabad.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Co-operative Department,
Govt. of Bihar, Patna.
2. The Joint Registrar, Co-operative Societies, Magadh Division, Gaya.
3. Kotbara Primary Agriculture Credit, Co-operative Society under Rafiganj
Block, District- Aurangabad, through its Chairman.
4. Block Development Officer-cum-Election Officer, Kotbara PACS, Rafiganj,
District- Aurangabad.
5. Block Co-operative Extension Officer, Rafiganj, District- Aurangabad.
6. Ameet Kumar Singh, S/o Late Ajay Kumar Singh, R/o Vill- Kauwakhap, P.O.-
Kona, District- Aurangabad.
7. Acchay Kumar Singh, S/o Late Vishamdeo Narain Singh, R/o Vill+P.O.-
Karshara, P.S.- Rafiganj, District- Aurangabad.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ishwari Singh, Advocate

For the Respondent : Mr. Ashok Kumar Dubey, AC to AAG-11

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-07-2018

Heard Mr. Ishwari Kumar Singh, learned counsel
appearing for the petitioner and Mr. Ashok Kumar Dubey, learned
assistant counsel to Additional Advocate General-11. Despite valid
service of notice, respondent no. 7 has neither appeared in person



nor is being represented through counsel. So far as respondent no. 6 is concerned, though he has appeared through Mr. Raghunath Singh, learned counsel, on repeated calls, he has failed to appear.

2. The present writ petition has been filed by the petitioner for quashing the order dated 24.06.2015/07.07.2015 passed by the learned Joint Registrar, Co-operative Societies, Magadh Division, Gaya in Election Dispute Case No.66/14-15 communicated to him under Memo No. 704 dated 07.07.2015 as contained in Annexure-3 to the writ petition whereby and whereunder the learned Joint Registrar, Co-operative Societies has set aside his election to the post of Chairman of Kotbara Primary Agriculture Credit Society (for short 'PACS') in the district of Aurangabad on the ground of infirmities in the voter-list. The petitioner has also prayed for quashing the order dated 30.12.2015/13.01.2016 passed by the learned Joint Registrar, Co-operative Societies, Magadh Division, Gaya in Review Case No- 3 of 2015 as contained in Annexure-4 to the writ petition whereby and whereunder the review petition has been dismissed.

3. The case of the petitioner is that in the election of Kotbara PACS, which was held on 01.11.2014, he was elected as its Chairman. In the said election, three candidates had contested



for the post of Chairman. Apart from the petitioner, the two other contesting candidates were respondent no. 7, Akshay Kumar Singh and one Archana Kumari. After declaration of the result on 02.11.2014, respondent no. 7 filed Election Dispute Case No. 66/14-15 on 29.01.2015 before the learned Joint Registrar Co-operative Societies, Magadh Division, Gaya challenging the election of the petitioner to the post of Chairman of the PACS on the ground that he was not a valid member of Kotbara PACS, since share money had not been deposited by him in the concerned Central Co-operative Bank and that name of 182 persons were illegally struck down from the voter-list by the Block Co-operative Extensive Officer. Though the Election Officer filed his show-cause in the said dispute denying all the allegations made by the respondent no. 7 in respect of voter-list, the Joint Registrar vide impugned dated 24.06.2015/07.07.2015 set aside the election of petitioner to the post of Chairman mainly on the ground of infirmities in the voter-list. The review petition filed by the petitioner was also dismissed by him vide impugned order dated 13.01.2016.

4. Challenging the orders passed by the learned Joint Registrar in the election dispute case as also in the review application, Mr. Ishwari Singh, learned counsel for the petitioner



submitted that the learned Joint Registrar grossly erred in law in entertaining the election dispute case due to non-compliance of Section 10(2)(a) of the Bihar State Election Authority Act, 2008 (for short 'the Act of 2008') which mandates that the petitioner shall join all the contesting candidates as parties in cases where, in addition to questioning the declaration of the returned candidates, the person who prefers the election dispute also seeks a declaration in his favour. He submitted that in the election dispute case, respondent no. 7 had not only challenged the election of the petitioner to the post of Chairman but had also sought for an additional relief that he be declared as elected Chairman of Kotbara PACS. He did not implead the contesting candidate Archana Kumari as a party in the election petition. He further submitted that the orders impugned cannot be sustained in view of the fact that having participating in the election on the basis of the same voter-list, the respondent no. 7 could not have been permitted to question the voter-list after declaration of the result. In this regard, he has placed reliance on a decision of this Court in the matter of **Nasimuddin vs. the State of Bihar & Ors.** since reported in [2006 (1) PLJR 184].

5. On the other hand, learned counsel appearing for respondent-State of Bihar submitted that as far as the findings of



the learned Joint Registrar are concerned, the same cannot be assailed on merits. He submitted that the petitioner had been noticed in the election petition, but he deliberately did not appear to contest the matter before the learned Joint Registrar. The learned Joint Registrar has given a clear finding that it was a case in which there were apparent interpolations and fraud in the preparation of the voter-list. Hence, the entire election process is vitiated.

6. It would be relevant to note here that a counter affidavit has also been filed on behalf of respondent no. 1 in which the answering respondent has categorically stated that the election petition did not fulfill the requirement of Section 10(2)(a) of the Act of 2008. In Para-20 of the counter-affidavit, respondent no. 1 has stated : “... *from the perusal of the said Case No. 66/2015, it is evident that the petitioner Akshay Kumar Singh and respondent no. 5, Pratima Singh were party to the case whereas from the perusal of the writ petition, in paragraph no. 8 and 13 (c), it is evident that another contesting candidate for the post of Chairman, namely Archana Kumari, w/o, Kundan Kumr Singh was not made party in the election petition, thus, the writ petitioner has rightly mentioned in paragraph no. 13 (d) that the said election petition (Election Dispute No. 66/2014-15) did not fulfill the requirement of Section 10(2)(a) of the Act. Hence, defect was there in the election petition*



and on this ground alone the election petition was not maintainable”.

7. I have heard leaned counsel for the parties and carefully perused the record.

8. In the state of Bihar, there are large number of bodies and institutions which are administered by elected representatives. The Co-operative Societies are administered by elected managing committees. In order to provide a common mechanism and procedure for holding election of these bodies, it was considered necessary to establish a body akin to the State Election Commission in the State of Bihar with the duty and responsibility of holding elections of Co-operative Societies. Accordingly, the Legislature of the State of Bihar enacted the Act of 2008.

9. Section 10 of the Act of 2008, which deals with election petition 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:*

Provided that if an election to any office of a body is under dispute, the election petition shall lie before such authority as is prescribed under the Act or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision,



before such Authority, which the State Government may prescribe by issuance of notification.

(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) Any other candidate against whom allegations of any corrupt practice are made in the petition.”

10. From a reading of Section 10(2)(a) of the Act of 2008, it would be manifest that when the petitioner of an election petition claims a declaration that the election of any returned candidate is void and he claims a further declaration that he himself or any other candidate has been duly elected all the contesting candidates other than the petitioner shall be made respondent in the election petition.

11. Admittedly, in the instant case, one of the contesting candidates for the post of Chairman, namely, Archana Kumari was not made a respondent in the election petition. Thus, the election



petition filed by the respondent no. 7 did not fulfill the requirements of Section 10(2)(a) of the Act of 2008, which manifests that the petitioner shall join all the contesting candidates as parties in cases where he in addition to questioning the declaration of the returned candidate also seeks a declaration in his favour.

12. From a perusal of election petition, as contained in Annexure-1, it would be manifest that the respondent no. 7 in addition to questioning the declaration of the petitioner as the returned candidate had also sought for a declaration in his favour. Hence, there was defect in the election petition and on this ground alone, the election petition was not maintainable.

13. Besides that, it is not in dispute that respondent no. 7 had contested the election on the same voter-list and having been unsuccessful, he could not have questioned the same on the ground of infirmities therein. Having participated in the election, a person cannot be permitted to question the voter-list after declaration of the result. The law on this issue stands well settled in **Nasimuddin vs. the State of Bihar & Ors.** (Supra).

14. In the result, the order dated 24.06.2015/07.07.2015 passed in Election Dispute Case No.66/14-15 and the order dated 30.12.2015/13.01.2016 passed in Review Case No- 3 of 2015, as



contained in Annexure-3 and 4 respectively to the writ petition, by the learned Joint Registrar, Co-operative Societies, Magadh Division, Gaya are set aside. In consequence, the position of the petitioner in the Kotbara PACS as its Chairman stands restored.

15. The writ petition stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2018
Transmission Date	NA

