

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.998 of 2017

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1. Jeewas Paswan S/o late Ghulam Paswan Resident of Village- Mohammadpur,
P.S. Mohiuddin Nagar, District- Samastipur.

.... Petitioner/s

Versus

1. Division Commissioner, Darbhanga Division, Darbhanga. At/P.O./ District-
Darbhanga. null null
2. Deputy Collector, Land Reforms, Patory, District- Samastipur.
3. Binod Sah S/o late Doman Sah
4. Rajkumari Devi W/o Binod Sah
5. Pappu Sah S/o Binod Sah
6. Lalan Sah S/o late Doman Sah
7. Gyaneshwar Sah S/o late Doman Sah Respondent No. 3 to 7 All Residents of
Village- Mohammadpur, P.S. Mohiuddin Nagar, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar, Adv.
Mr. Tarique Yazdani, Adv.

For the State : Mr. Krishna Kumar Singh, A.C. to GP-22

For Respondent No.3 : Mr. Mukesh Kumar, Adv.

For Respondent No.4 : Mr. Rakesh Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 17-01-2018

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Bihar State Election
Authority.

2. This writ petition has been filed by the petitioner for
quashing the letter no. 40 dated 10.01.2018 issued by the office of the
Chief Election Officer, Bihar State Election Authority, Patna in
response to letter no.11 dated 09.01.2018 of the Sub-Divisional
Officer, Purnea Sadar-cum-Election Officer, District Central Co-
operative Bank in which it has been stated that no person shall be



eligible for election to the Managing Committee of a co-operative society if he has criminal proceeding relating to any transaction of the registered society pending against him in which cognizance has been taken in terms of Section 44BE(3)(e) of the Bihar Co-operative Societies Act, 1935 (for short 'Act, 1935'). The petitioner has also prayed for commanding the respondents to accept his nomination for the post of Chairman, District Central Co-operative Bank Limited, Purnea and to allow him to participate in the election process.

3. Mrs. Nivedita Nirvikar, learned counsel for the petitioner submitted that the petitioner was the Chairman of the District Central Co-operative Bank Limited for the period 27.11.2012 to 27.11.2017. The term of five years came to an end and a fresh election was to commence for which he filed nomination paper on 08.01.2018 for contesting the upcoming election of the District Central Co-operative Bank Limited, Purnea scheduled to be held on 18.01.2018 but his nomination to contest the election has been cancelled on the ground of being accused in a criminal case. She submitted that though there is a criminal case against the petitioner, the same cannot be said to be a criminal proceeding relating to the transaction of registered society pending against him in which cognizance has been taken.

4. On the other hand, Mr. Mukesh Kumar Thakur, learned counsel appearing for the Bihar State Election Authority submitted



that the order of rejection of nomination has not been brought on record. The said order was passed by the Returning Officer and in absence of the order of rejection, the writ petition would not be maintainable. He submitted that in view of the fact that the Managing Director of the Co-operative Bank had instituted a criminal case against the petitioner in which he was putting pressure upon him for making illegal payment in respect of a vehicle being used by him, the same will come within the ambit of criminal proceeding relating to the transaction of a registered society. He submitted that the election is scheduled to be held tomorrow and any interim order passed by this Court would delay the entire election process.

5. He submitted that in view of the provisions prescribed under the Bihar State Election Authority Act, 2008 (for short 'the Act, 2008') and in view of the decisions of the Supreme Court in *N.P. Punnuswami Vs. Returning Officer & Ors. [AIR 1952 SC 64]*, *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra [(2001) 8 SCC 509]*, *Mohinder Singh Gill Vs. Chief Election Commission [(1978) 1 SCC 405]*, *Election Commission of India vs. Ashok Kumar [(2000) 8 SCC 216]* and *Shaji K. Joseph Vs. V. Vishwanath & Ors. [2016 (2) PLJR SC 330]* in respect of election of a co-operative society, a writ petition under Article 226 of the Constitution of India would not be maintainable



after the election process has commenced.

6. I have heard learned counsel for the parties and perused the record.

7. The grievance of the petitioner comes in the category of improper rejection of nomination paper filed for the post of Chairman, District Central Co-operative Bank Limited.

8. Section 10(1)(i) of the Act, 2008 clearly stipulates that the election to any office of a body shall not be called in question except by an election petition as prescribed. The proviso to Section 10(1)(i) prescribes 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.

9. Section 11 of the Act, 2008 bars interference by Courts in electoral matters. Section 11(b) reads as under :-

“11(b) Notwithstanding anything contained in this Act, no election to any body shall be called in question except by an election petition presented to the Prescribed Authority under this Act.”

10. Section 12 of the Act, 2008 deals with the grounds for declaring election to be void by the prescribed Authority. Section 12



(1) (c) deals with the grounds of improper rejection of nomination paper. Section 12(1)(d)(iv) prescribes that due to non-compliance with the provision of the Act or of any rules or orders made thereunder, the Prescribed Authority shall declare the election of the returned candidate to be void.

11. Under Section 48 of the Act, 1935, the Registrar, Cooperative Society has been empowered to entertain any dispute touching the business of a registered society other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant or the society.

12. Similarly, clause (6) of Section 14A of the Act, 1935, which was substituted by Act 3 of 2012 stipulates as under :-

“No election to any class or classes of registered societies notified under sub-section (1) shall be called in question except by way of an election petition filed within ninety days from declaration of the result of such election and the same shall be decided as a dispute under section 48 of this Act. Such an election petition shall be filed before the Registrar or such other officer appointed to assist the Registrar under Section 6 of this Act.”

13. Recently, this Court had an occasion to deal with a similar matter in *Md. Shamim Vs. The State of Bihar & Ors.* (C.W.J.C. No. 15229 of 2017). This Court placing reliance on the decisions of the Supreme Court noted above, in its judgment dated 09.01.2018, clearly held that to contest an election is a simple and



purely statutory right and if statute provides remedy, the same has to be taken recourse to after the election is over. It would be relevant to point out that the Bihar State Election Authority Act, 2008 is a complete code in respect of election of a society, which prescribes election petition, authority before whom the election petition would lie and the parties to the petition. It clearly stipulates that no election to any body shall be called in question except by an election petition presented to the prescribed authority under the Act.

14. In view of the statutory provisions discussed above and in the light of the decision of this Court in *Md. Shamim Vs. The State of Bihar (Supra)*, in which this Court has taken note of the decisions of the Supreme Court, as referred to above, I am of the considered opinion that issue of illegal rejection of nomination of the petitioner can only be challenged by way of filing an election petition and not by way of filing a writ petition under Article 226 of the Constitution of India.

15. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-01-2018
Transmission Date	

