

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12390 of 2018

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Mukesh Rai, S/o Sree Raj Ballan Rai, R/o Vill.-Banwari Basant, P.O.-Basant, P.S.-
Garkha, Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Society, Bihar, Patna.
2. The Bihar State Election Authority through the Chief Election Officer 32 Hardin Road, Patna.
3. The Registrar, Co-operative Society, Bihar, Patna.
4. The Joint Registrar (Panana), Co-operative Society, Bihar, Patna.
5. The District Cooperative Officer, Saran.
6. The Block Development Officer, Saran.
7. Jamadar Rai, S/o Sri Jagarnath Rai, Resident of Vill.-Banwari Basant, P.O.-Basant, P.S.-Garkha, Dist.-Saran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Advocate

For the Respondent/s : Mr. Manoj Kr. Ambastha, SC-26

For the Respondent-SEA : Mr. Mukesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-09-2018

The present writ petition has been filed by the petitioner for quashing the order dated 02.04.2018/16.04.2018 passed in Election Case No.269 of 2014 whereby the Joint Registrar (Panana), Co-operative Society, Bihar, Patna has cancelled the



election of the petitioner as Chairman of Shreepal Basant Primary Agriculture Credit Co-operative Society (for short 'PACCS').

2. A preliminary objection has been raised by the respondent-State Election Authority regarding the maintainability of the writ petition on the ground that the petitioner, who was opposite party no.4 in Election Dispute Case No.269 of 2014, was a co-member and therefore, he was not eligible to contest the election rather he was only competent to cast vote, as envisaged under section 44 AQ (6) of the Bihar Co-operative Societies Act, 1935 (for short 'the Act').

3. It is contended that since the matter was referred to the Joint Registrar by the Registrar, Co-operative Societies, Bihar in case the petitioner is aggrieved by the impugned order, he has a remedy of appeal under sub-section (6) of Section 48 of the Act.

4. Learned counsel for the petitioner contended that the availability of an alternative remedy cannot be treated as a bar for the writ jurisdiction of this Court.

5. It is true that the right of judicial discretion guaranteed under Article 226 of the Constitution of India is a basic feature of the Constitution. Thus, remedy of writ before the High Court cannot be barred by any parliamentary legislation or the State enactment. But it is self-imposed rule of restriction that the High



Court shall not exercise its jurisdiction under Article 226 of the Constitution if alternative remedy is available to a litigant. In catena of decisions the Supreme Court as also the High Court has held that whenever there is alternative remedy available to a litigant, discretionary jurisdiction shall not be exercised by the High Court.

6. The Supreme Court in *Whirlpool Corporation Vs. Registrar Of Trade Marks, Mumbai & Ors. [(1998)8 SCC 1]* observed :

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

7. Keeping the above principles laid down by the



Supreme Court in mind, when I look to the facts of the present case, I do not find that any of the aforesaid contingencies are involved in the present case. There is no extra ordinary circumstance, which may compel this Court to entertain the present application in writ jurisdiction inspite of availability of equally efficacious statutory remedy.

8. Accordingly, the application is dismissed with liberty to the petitioner to avail the statutory remedy provided under law. If an appeal under sub-section (6) of Section 48 of the Act is filed within four weeks from today against the order impugned, the learned Registrar, Co-operative Society, Bihar shall entertain the same in accordance with law on merits.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2018
Transmission Date	NA

