

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14968 of 2017

=====

Anil Kumar Singh, Son of Late Shashidhar Prasad Singh, Resident of Village Velai, P.S. Banka, District Banka at present Chairman, Dara PACS, Banka.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, State of Bihar, Patna.
2. Bihar State Election Authority, through its Administrator.
3. Registrar Cooperative Society, Bihar, Patna.
4. District Officer, cum District Election Officer, Vyapar Mandal, Cooperative Committee, Banka.
5. District Cooperative Officer cum Deputy Election Officer, Vyapar Mandal Cooperative, Banka.
6. Block Development Officer cum Deputy Election Officer, Vyapar Mandal Cooperative Banka.
7. Block Cooperative Extension Officer, Banka.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate

For State Election Commission : Mr. Mukesh Kumar, Advocate

For the Respondent/s : Mr. Sushil Kumar-Gp22

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-01-2018

In the present writ petition, the prayer of the petitioner is for quashing the order dated 09.10.2017 passed by the Block Development Officer cum Election Officer (Co-operative Society), Banka whereby and whereunder he has rejected the nomination paper filed by the petitioner for the post of Chairman, Vyapar



Mandal, Co-operative Committee, Banka. Another prayer of the petitioner is to direct the respondents to accept the nomination paper filed by the petitioner for the post of Chairman and to stop the election process of the Vyapar Mandal, Co-operative Committee, Banka till the disposal of the writ petition.

2. At the outset, it is admitted by the petitioner that during the pendency of the writ petition, the election has been held and one Niranjana Kumar Singh has been declared as Chairman, Vyapar Mandal, Co-operative Committee, Banka on 17.10.2017.

3. By way of I. A. No. 7856 of 2017, the petitioner has challenged the election of Niranjana Kumar Singh as Chairman, Vyapar Mandal, Co-operative Committee, Banka.

4. A preliminary objection has been raised by the learned counsel appearing for respondent no. 2 that once the election process started and, after completion of election, the result has been declared, the writ petition would not be maintainable. He submitted that no election of Co-operative Committee can be set aside except by way of filing a petition under Section 48 of the Bihar Co-operative Societies Act, 1935.

5. On the other hand, learned counsel for the petitioner submitted that in exceptional cases, this Court may entertain a writ petition challenging election of the Vyapar Mandal. Here is a case



in which the petitioner was not given an opportunity to be heard before cancellation of his nomination paper and, thus, it is an exceptional case.

6. Having heard the parties, I find force in the submission made by the learned counsel for the respondent no. 2.

7. There is no dispute to the fact that an election to the post of Chairman of Vyapar Mandal, Co-operative Committee, Banka can be challenged under Section 48 of the Bihar Co-operative Societies Act, 1935 within 90 days from the date of declaration of the result by filing an election petition before the Registrar, Co-operative Societies.

8. In **N. P. Ponnuswami vs. The Returning Officer, Namakkal Constituency and others [AIR 1952 SC 64]**, the appellant was one of the persons who had filed nomination papers for election to the Madras Legislative Assembly. The Returning Officer rejected his nomination paper on certain grounds. The appellant thereupon moved the High Court under Article 226 of the Constitution of India praying for a writ of certiorari to quash the order of the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by



the reason of the provision of Article 329(b). In appeal, upholding the observations of the High Court, the Supreme Court observed that Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which the grounds may be raised under the law to call the election in question. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal.

9. The Court further observed that any other meaning ascribed to the words would lead to anomalies, which the Constitution could not have contemplated. One of them being that conflicting views may be expressed by the High Court at the pre-polling stage and the election tribunal at the stage when the matter is brought up before it. Hence, the High Courts have no jurisdiction under Article 226 of the Constitution to entertain petition.

10. In **Jyoti Basu & Ors. vs. Debi Ghosal & Ors. [(1982) 1 SCC 691]**, the Supreme Court observed *“a right to elect, fundamental though it is to democracy, is, anomalously neither a fundamental right nor a Common Law Right. It is a statutory right. So is the right to be elected, and the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected,*



and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down”.

11. The Bihar Co-operative Societies Act, 1935 is a composite act, the provisions prescribed therein prescribes the mode and procedure under which an election dispute has to be challenged. I am of the opinion that so far as the prayers in the present writ petitions are concerned, they cannot be entertained through writ petition. The nomination of the petitioner stood cancelled well within time and by following due process of the law by the election officer. The election has already been held and the result has already been declared. The grievance that the nomination of the petitioner was wrongly cancelled can be raised by filing an



election petition under Section 48 of the Bihar Co-operative Societies Act, 1935 and the authority is expected to deal with it on merits.

12. Thus, keeping in mind the decisions of the Supreme Court discussed above, the writ petition and the interlocutory application are dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2018
Transmission Date	NA

