

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15159 of 2017**

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Prem Kumar Pandey son of Late Maninath Pandey, resident of village- Barkagaon,  
P.O.- Mohan Darwa, P.S.- Belaon, District- Kaimur at Bhabhua.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department,  
Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The District Magistrate-cum-District Election Officer (Co-operative), Kaimur at  
Bhabhua, District- Kaimur at Bhabhua.
4. The District Cooperative Officer, Kaimur at Bhabhua, District- Kaimur at  
Bhabhua.
5. The Block Development Officer-cum Returning Officer, Rampur Block Vyapar  
Mandal Election, 2007, District- Kaimur at Bhabhua.
6. The Bihar State Election Authority, 32, Harding Road, Patna, through the  
Secretary.
7. The Chief Election Officer, the Bihar State Election Authority, 32, Harding  
Road, Patna.
8. The Deputy Secretary, the Bihar State Election Authority, 32, Harding Road,  
Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate  
: Ms. Anita Kumari, Advocate  
For the Respondent/s : Mr. Chittranjan Sinha, PAAG-2

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 20-06-2018**

Heard learned counsel for the parties.



2. In the instant writ petition, the prayer of the petitioner is for quashing the letter dated 09.10.2017 issued under the signature of respondent no.5 whereby and whereunder the respondent no.5 has informed the State Election Authority (for short 'Authority') regarding alleged absence of quorum in the election of Managing Committee of Rampur Block Vyapar Mandal and has sought its direction. Another prayer of the petitioner is for directing the respondent no.5 to declare the petitioner elected uncontested as the Chairman of Rampur Block Vyapar Mandal Co-operative Society (for short 'Society').

3. The contention of the petitioner is that after constitution of Society in 2010, the Authority declared the election for constitution of its Managing Committee in 2012 and for the purpose of election when the Returning Officer had published the voter list there were nine members only for the said Society. Therefore, the election was conducted from amongst nine members only and in that election the petitioner had successfully contested for the post of Chairman. Since the term of the office of the elected office bearer of the Society is five years, the election for the said Society became due in 2017. Accordingly, the Authority notified the schedule for holding election of Managing Committee of the Society. As per schedule, the date for filing of nomination was fixed on 07.10.2017, the date of scrutiny was



fixed on 09.10.2017, the date of withdrawal was fixed on 10.10.2017 and the date of election was fixed on 17.10.2017. The petitioner filed his nomination for the post of Chairman. No other nomination was received by the Returning Officer. On scrutiny, nomination paper of the petitioner was found in order. Since the petitioner did not withdraw his candidature, he was the only candidate for the post of Chairman of the said Society. Since Rampur Block consists nine Gram Panchayats only, there are nine PACCS also in the said Block. The Returning Officer published list of the members/voters of the said Society in Form-IC on 21.06.2017. However, since the Chairman of three PACCS were defaulter of the Bank, in the final voter list name of only six members was published. The other five members of the Society had also filed their nomination to contest for the post of Member of the Managing Committee and their nomination papers were also found in order.

4. It has been submitted by Mr. Manglam, learned counsel for the petitioner, that since the number of Managing Committee Members is more than the number of nominations received for the membership, in terms of the provisions contained in Rule 21-P(1) of the Bihar Co-operative Societies Rules, 1959 (for short 'the Rules'), there was no requirement for holding election either for the post of Chairman or for the post of Member of the Managing Committee of



the said Society. The Returning Officer was under obligation to declare all the candidates elected for their respective offices uncontested on the date of declaration of result. He submitted that the Returning Officer failed to discharge his duty in accordance with law and erroneously wrote a letter on 09.10.2017 to the Authority seeking guidelines for the election of the Managing Committee of Society without looking to the provisions of law particularly Rule 21-P and proviso to Rule 21-Q of the Rules. He submitted that subsequently vide letter No. 1011 dated 13.10.2017, as contained in Annexure-B to the counter affidavit filed on behalf of the respondents, the Authority issued a general instruction to the authorities that if after nomination or scrutiny or withdrawal of candidature it becomes clear that there is lack of quorum in election to the Managing Committee then election should be stopped at that stage itself and the necessary information shall be given to the Authority. He contended that in view of said illegal direction of the Authority, the result of the election of the Managing Committee or its Chairman has not been declared till date. He contended that Rule 21-P of the Rules read with proviso to 21-Q of the Rules categorically provides for uncontested election if the number of the valid nomination does not exist the number of seat to be filled. According to him, the respondents cannot take a ground of lack of quorum to avoid the declaration of the result for the post of



Chairman of the Rampur Block Vyapar Mandal in question. He contended that no minimum number is fixed for constituting Managing Committee of a Society under the Act or the Rules and hence, the question of lack of quorum does not arise. Lastly, it has been contended that so far as reservation of posts are concerned, the same is not mandatory and the State Government is vested with the power to relax it under Section 14(2) of the Act.

5. A counter affidavit has been filed on behalf of the Respondent No. 5 in which it has been contended that the respondent no. 5 had rightly sought a guideline from the Authority as there was lack of quorum for the election of the Managing Committee of the Society, which was constituted in the year 2010 from the old Bhagwanpur Vyapar Mandal. It is further contended that according to Rule 23(2) of the Rules, any member of Society cannot be a candidate for the post of Chairman or its Managing Committee. Out of nine Members, three were found defaulters of the Central Co-operative Bank, Branch Bhagwanpur, hence, their names were deleted from the voter list and only six members continued to remain as voters. It has been further stated that as per reservation policy adopted for the Members of the Managing Committee fifty per cent seats are unreserved and the remaining fifty per cent seats have been reserved for the Members of Scheduled Castes/Scheduled Tribes, Backward



Classes and Extremely Backward Classes. Also, in the reserved and unreserved category, there is mandatory provision for reservation of fifty per cent seats to the women. It is stated that not only there is lack of members of reserve category but there is lack of quorum also.

6. A separate counter affidavit has been filed on behalf of the respondent nos. 6 to 8 in which it has been pleaded that after filing of the nomination paper it became clear that the Managing Committee of the Society in question cannot be constituted for lack of quorum. Therefore, the Block Development Officer-cum- Returning Officer, Rampur Block vide his letter no.1009 dated 09.10.2017 sought a guideline from the Authority. In view of the guideline sought from various places, the Authority vide letter no.921 dated 22.09.2017 issued a general direction to all the District Co-operative Officers stating therein that if after the nomination or scrutiny or withdrawal of candidature it becomes clear that there is lack of quorum in the election of Managing Committee of the Co-operative Society, then election shall be stopped at that stage itself. Another letter bearing no. 1011 dated 13.10.2017 was again issued by the Authority in this regard to all concerned authorities. In the counter affidavit, it has been further contended that the question of issuing certificate to the elected candidate would arise only after declaration of result, but since the election itself has been stopped at the stage of nomination for the lack



of quorum, the petitioner cannot claim as a matter of right to issue the certificate.

7. Based on the afore-stated submissions and the pleadings of the parties, the question before the court is as to whether this court should issue a writ of mandamus to respondent no. 5 to declare the petitioner uncontested as Chairman of Society.

8. For determination of the issue, it would be necessary to take into consideration the relevant provisions of the Act and Rules first.

9. First of all, I would like to take note of Section 14(2) of the Act which reads as under:-

“14(2) - The management of the registered Society shall be vested in managing committee constituted in accordance with the provisions of this Act and Rules/Byelaws of the Society made under this Act.

Notwithstanding any thing contained in any provision of this Act or Rules/Byelaws of the Society the maximum number of members including office bearer or office bearers in a Managing Committee of Society shall be seventeen in Apex and State level Society, fifteen in Central Co-operative Society and thirteen in Primary Society:

(i) Provided that there shall be reservation of two seats for the Scheduled Castes or the



Scheduled Tribes, two seats for the Backward Classes and two seats for the Extremely Backward Classes on the Board of every Co-operative Society:

(ii) Provided further that for the purpose of reservation of seats as in the above proviso, the State Government may, by general or special order, exclude the board of societies or class of societies not consisting of individuals as members or not having members from above categories of reservation:

(iii) Provided further that the total number of seats so reserved shall not exceed fifty per cent of the total number of seats:

(iv) Provided further also that as nearly as but not exceeding fifty per cent of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes, the Backward Classes and the Extremely Backward Classes, as the case may be:

(v) Provided further also that as nearly as but not exceeding fifty per cent of the total number of seats not reserved above for the Scheduled Castes or the Scheduled Tribes, the Backward Classes and the Extremely Backward Classes shall be reserved for women:

(vi) Provided further also that the total number of seats so reserved for women shall not be less



than two.

The seats so reserved shall be filled up from amongst the members of Scheduled Castes or Scheduled Tribes, Backward and Extremely Backward Classes and women either by election or/and by co-option. This provision shall apply to all Societies from the Primary Society and up to the Apex societies:

(vii) Provided further also that such reservation in Primary Society and up to the Apex Society shall be governed by the Rules made under this Act for this purpose.”

**10.** Further, the relevant Rule 21-P and 21-Q of the Rules read as under:-

“**21-P.** (1) Where the number of valid nominations for any seat does not exceed the number of seats to be filled the candidates for whom valid nominations have been received shall be deemed to have been duly elected to fill such seat.

Provided that the declaration of result of such elections also shall be made in the Special General Meeting the minutes of the Special General Meeting shall also be recorded.

(2) If no valid nominations are received for



any one more seats such seat shall be filled by Co-option from amongst the members of the society.

**21-Q.** If the number of valid nominations for any seat exceeds the number of the seats there shall be an election.

Provided that whether the elections are uncontested or contested in both the cases the declaration of elections results shall be made in the Special General Meeting and the minutes of the meeting shall be recorded in which results of the elections shall be mentioned.”

**11.** Referring to the afore-stated Section 14(2) of the Act and Rule 21-P of the Rules and 21-Q of the Rules, Mr. Manglam, appearing for the petitioner has submitted that it would be manifest from the reading of the aforesaid provisions that there is no quorum fixed for constitution of Managing Committee of the Society. His contention is that though maximum number of members including office bearers of the Managing Committee of Society has been stipulated under Section 14(2) of the Act, no minimum number of members of a Managing Committee has been fixed and in case there is only six members in the Society out of whom one has filed his nomination for the post of Chairman and the others five members



have filed their nomination for the post of member of the Managing Committee, they all ought to have been declared to be elected. He has submitted that since number of valid nominations did not exist the number of seats to be filled, the candidates for whom valid nominations were made ought to have been declared elected in terms of Rule 21-P(1) of the Rules.

**12.** The argument advanced by Mr. Manglam prima facie appears to be quite attractive, however, when I give a deeper look to the provisions prescribed under Section 14(2) of the Act, I find that the maximum number of Members including office bearers in a Managing Committee of the Central Co-operative Society has been fixed to be fifteen. There is no dispute to the fact that the Society in question is a Central Co-operative Society. It is apparent that the reservation policy in Section 14(2) of the Act is specific. The first proviso of Sub-Section (2) of Section 14 of the Act stipulates that there shall be reservation of two seats each for the Scheduled Castes or the Scheduled Tribes, the Backward Classes and the Extremely Backward Classes on the Board of every Co-operative Society. The second proviso confers jurisdiction in the State Government to relax the Board of societies or class of societies not consisting individual members or not having members from the above categories of reservation by general or special order. The third proviso provides that



the total number of seats so reserved shall not exceed 50% of the total number of seats. The fourth proviso provides further that as nearly as but not exceeding 50% of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes, the Backward Classes and the Extremely Backward Classes, as the case may be. The fifth proviso provides for reservation of unreserved seats for women from that category. The sixth proviso provides further that the total number of seats so reserved for women shall not be less than two.

**13.** Thus, it is apparent that the reservation policy incorporated in the proviso the Section 14 (2) mandates that every Society must have at least two members from the three classes of reserved category, i.e. Scheduled Castes or Scheduled Tribes, Backward Classes and Extremely Backward Classes. It also mandates that the number of members of reserved category shall not be more than fifty per cent. It further mandates that from among the unreserved category at least two members should be women. Thus, in effect one cannot imagine of a Society of less than the minimum number of members from each category.

**14.** It would be evident from Annexure P-3 that in the Society in question out of the six members including the petitioner four are from General Category and one each from the Backward



Category and Scheduled Castes Category who all had filed nomination paper for the Managing Committee. Thus, there is no nomination from the Extremely Backward Category. There is also no nomination by any woman from any category. As a matter of fact, the Society has only six members out of whom there is no woman.

**15.** It is true that the second proviso to Sub-Section (2) of Section 14 confers powers upon the State Government under the special circumstances to exclude the Board of societies or class of societies not consisting of individuals as members or not having members from the reserved categories by general or special orders. However, in the present case, there is no such order by which the State Government has relaxed the rule of reservation.

**16.** Moreover, 97<sup>th</sup> amendment to the Constitution in second proviso to Article 243(ZJ) enjoins the State Legislature to provide for reservation for Scheduled Castes/Scheduled Tribes and Women on the board of every Co-operative Society consisting of individuals as members and having members such class or category of persons.

**17.** Since the very quorum for constituting the Managing Committee was not complete, no illegality can be found with the action of respondent no.5 whereby he did not proceed further in the election of the office bearers of the Managing Committee after filing



of the nomination papers. There is no question of declaring the candidates filing nomination elected in terms of Rule 21-P and 21-Q of the Rules in absence of quorum.

**18.** The writ petition, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md.S./-

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