

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1013 of 2018

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1. Navendra Jha, son of Late Kulanand Jha, resident of Village and Post- Awari, P.S.- Saharghat, District- Madhubani at present Elected Chairman of Board of Directors of Rahika Central Cooperative Bank Limited, Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Co-operative, Co-operative Department, Government of Bihar, Patna.
2. The Registrar, Co-operative Societies, Bihar, Patna
3. The Deputy Registrar (Sugarcane), Co-operative Department, Bihar, New Secretariat, Patna
4. In-charge Officer, Section 6 (Reg) Credit, Co-operative Department, New Secretariat, Patna
5. The Bihar State Election Authority through Chief Election Officer, 32 Harding Road, Bihar, Patna
6. The Sub-Divisional Officer, Madhubani-cum-Returning Officer, Madhubani.

.... Respondent/s

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Appearance :

- For the Petitioner/s : Mr. Y. V. Giri, Sr. Adv.
Mr. Purushottam Jha, Adv.
Mr. Vikash Kumar Jha, Adv.
For the State : Mr. M.K.Ambastha –SC-26
Mr. Subodh Kumar, A.C. to SC-26
For Respondent No.5 : Mr. Mukesh Kumar Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-01-2018

Though several prayers have been made in the present writ petition, the petitioner has confined his prayer in respect of rejection of his nomination for the post of Chairman of Rohika Central Co-operative Bank Limited, Madhubani on the ground of disqualification due to pendency of a surcharge proceeding under Section 40 of the Bihar Co-operative Societies Act, 1935 (for short ‘Act, 1935’) against the petitioner.



2. Mr. Y.V. Giri, Learned Senior Advocate appearing for the petitioner submitted that the petitioner filed his nomination for the post of Chairman of Rohika Central Co-operative Bank Limited, Madhubani on the scheduled date of filing nomination on 08.01.2018, which has been illegally rejected by the Returning Officer-cum-S.D.O., Madhubani vide his order dated 09th/10th January, 2018. He submitted that the election is scheduled to be held on 18.01.2018 and by an illegal order the petitioner has been deprived of his statutory right to contest the election.

3. Mr. Giri, learned Senior Advocate, submitted that the very initiation of the surcharge proceeding against the petitioner by the Registrar, Co-operative Societies vide his order dated 20th/23rd June, 2017 without hearing the petitioner under Section 40 of the Act, 1935 is bad in law. He further submitted that the nomination of the petitioner has been rejected by the Returning Officer without appreciating the fact that by order dated 04.01.2018 the learned Minister, Co-operative Societies had stayed the order dated 04.01.2018 passed by the Registrar in Appeal No. 07 of 2017.

4. He contended that the holding of election for the post of Chairman of Rohika Central Co-operative Bank by rejecting the candidature of the petitioner is bad in law and, hence, fit to be set aside.



5. Per contra, Mr. Mukesh Kumar Thakur, learned Advocate 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.

6. He submitted that 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, after the election process has commenced, a writ petition under Article 226 of the Constitution of India would not be maintainable in view of the provisions of the Bihar State Election Authority Act, 2008 (for short 'Act, 2008'), which clearly stipulates that no election to any body shall be called in question except by an election petition presented to the prescribed authority under this Act.

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



8. There is no dispute to the fact that 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.

9. It would be relevant to point out that the 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.

10. 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.

11. 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.”



12. 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.

13. 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.

14. 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.”

15. 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). In the said case, this Court, in its



judgment dated 09.01.2018 placing reliance on the decisions cited by the learned Advocate for the Bihar State Election Authority, as noted above, 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.

16. 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)*, 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 challenging the order passed by the Returning Officer in extraordinary writ jurisdiction under Article 226 of the Constitution of India.

17. 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	

