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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1655 of 2017**

- Devanand Chandra S/o Tumeshwar Chandra, Aged About 40 Years R/o Village Ganjai Bhawna, Post Bhadisar, P. S. Sarangarh, District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Cooperative Department, Mahanadi Bhawan, New Raipur Chhattisgarh.
2. State Co-Operative Election Commission Through Its Secretary, Collectorate Chowk, Opposite Dr. B.R. Ambedkar, Statue, Raipur Chhattisgarh.
3. The Returning Officer, Seva Sahkari Samiti Maryadit, Kedar, District Raigarh Chhattisgarh Namely Shri Asharam Chouhan, Assistant Veterinary Surgeon, Kedar, District Raigarh Chhattisgarh

---- Respondent**WPC No. 1687 of 2017**

- Ishwar Prasad Chandra S/o Dalganjan Chandra Aged About 55 Years R/o Village Uchbhitthi, Police Station Kosir, Tahsil Sarangarh, District- Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Cooperative Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. State Co-Operative Election Commission Through Its Secretary, Collectorate Chowk, Opposite Dr. B.R. Ambedkar, Statue, Raipur Chhattisgarh.
3. The Returning Officer, Seva Sahkari Samiti Maryadit, Gatadih, District Raigarh, Chhattisgarh Namely Shri Rambhushan Tiwari, Deputy Director, Veterinary Services, Raigarh, District Raigarh, Chhattisgarh

---- Respondent

For Petitioners : Shri Rakesh Pandey, Advocate.
For Respondent/State : Shri Shashank Thakur, Govt. Advocate.
For Respondent No.2 : Shri Rajeev Shrivastava, Advocate.
For Intervenor : Shri Vivek Verma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/08/2018

1. The petitioners would call in question the election process for conducting election of the primary society namely, Seva Sahkari Samiti Maryadit, Kedar, Sarangarh, District Raigarh.
2. From the facts projected in the writ petitions, grounds of challenge appear to be that out of 85 candidates, who have submitted their nomination form, 4 nominations were rejected and out of remaining 81, 70 candidates withdrew their nominations.
3. According to learned counsel for the petitioners, the petitioners and some other candidates have not withdrawn their candidature, yet by committing fraud, their candidature was shown to be withdrawn, therefore, present is a case where not only interference should be made in the writ jurisdiction but an enquiry should also be directed.
4. By order dated 16.6.2017, this Court stayed the election process. However, there was no occasion to hold election on 18.6.2017 because a day prior to that all the 11 members were elected unopposed. The Election Officer however has not formally declared the result because of the interim order passed by this Court.
5. In course of hearing, learned counsel for the respondents, at the outset,

would raise objection that the petitioners have alternative remedy of raising election dispute before the jurisdictional Registrar under Section 64 (2)(v) of the CG Cooperative Societies Act, 1960 (for short 'the Act'), therefore, the writ petitions are not maintainable.

6. Countering the submissions, Shri Pandey, would refer to the judgment rendered by the Supreme Court in the matter of **Election Commission of India through Secretary Vs. Ashok Kumar and others** {AIR 2000 SC 2977}. He would also refer to the provisions contained in the CG Panchayat Raj Adhiniyam, 1993 and CG Municipalities Act where there is bar for the Courts to entertain a dispute concerning election.
7. Section 64 (1) of the Act provides that any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute. Clause (v) of sub-section (2) provides that for the purposes of sub-section (1), a dispute shall also include any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.
8. It is thus apparent that alternative remedy is available to the petitioners for raising a dispute after the results are declared. The argument canvassed by the petitioners that a dispute cannot be raised from the date of announcement of election programme till the declaration of results, therefore, during this period remedy under Section 64 (2)(v) of the Act is not available and the writ petition is the only remedy, fails to impress this Court

because if the argument is accepted, then in every cooperative election, writ petition would be entertainable from the date of announcement of election programme till the declaration of the results, despite the fact that the Supreme Court, time and again, has cautioned the High Courts that writ petition should not be entertained for stalling the election process.

9. Here, I may refer to the recent decision of the Supreme Court in the matter of **Shaji K. Joseph Vs. V. Vishwanath and Others** {(2016) 4 SCC 429} wherein the following has been held in paras- 15 & 16:-

15. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election programme on 27-1-2011 and more particularly when an alternative statutory remedy was available to Respondent 1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent 1 for contesting the election is concerned, though prima facie it appears that Respondent 1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's order. Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.

- 16.** This Court, in **N.P. Ponnuswami v. Returning Officer** {AIR 1952 SC 64} has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State**

of Maharashtra {(2001) 8 SCC 509}.

10. In view of the settled legal position, I do not deem it appropriate to entertain these writ petitions challenging the election process and instead, relegate the petitioners to avail alternative remedy under Section 64 (2)(v) of the Act. The petitioners may still do so within the stipulated time immediately after the results are declared by the Election Officer. It is expected that if the petitioners choose to raise a dispute under Section 64 (2)(v) of the Act, the jurisdictional Registrar shall consider and decide the same at the earliest, preferably within a period of 6 months from the date of submission of dispute.

11. With the aforesaid observations, the Writ Petitions stand disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

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