

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6860 of 2020

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1. Smt. Gita Devi W/o Krishna Kumar Resident of Village- Asha Tola, Bariarpur, P.s.- Barairpur, District- Munger, Member of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Ltd, Munger
 2. Smt. Bibha Devi W/o Dandari Mandal Resident of Village and P.o.- Gandhipur, Bariarpur, P.s.- Barairpur, District- Munger, Member of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Ltd, Munger
 3. Smt. Kavita Devi W/o Nirdhan Mandal Resident of Gandhipur, P.s.- Barairpur, District- Munger, Member of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Ltd, Munger
 4. Smt. Sarita Devi W/o Bahadur Mandal Resident of Gandhipur, P.s.- Barairpur, District- Munger, Member of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Ltd, Munger
 5. Smt. Sunita Devi W/o Hardeo Mandal Resident of Gandhipur, Bariarpur, P.s.- Barairpur, District- Munger, Member of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Ltd, Munger

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-operative, Bihar, Patna
2. The Registrar, Co-operative Societies, Bihar, Patna
3. The Chief Election Officer, Bihar State Election Authority, Patna
4. The District Magistrate, Munger cum the Election Officer of the Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahkari Samati Ltd., Munger

... .. Respondents

Appearance :

For the Petitioners	:	Mr.Bindhyachal Rai
	:	Mr.Anshu Priyedrashini
For the Respondents	:	Mr.Shushil Kumar (GP 22)
For Co-operative Department:	:	Mr.Mukesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 09-07-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

Heard learned counsel for the petitioners, learned counsel for the State of Bihar and learned counsel for the State



Election Authority.

The petitioners claim to be the members of Bihar Mahila Sewa Bachat Ewam Sakh Swablambi Sahakari Samiti Ltd., Munger (hereinafter referred to as the Co-operative Society), which is a Co-operative Society registered under the provisions of Bihar Self Supporting Co-operative Societies Act, 1996 (hereinafter referred to as 'the Act'). They have filed the present writ application seeking direction to the respondents to conduct election of the managing committee of the said Co-operative Society. It is the petitioners' grievance that the election of the society is due since 04.02.2018, when the term of the office of erstwhile managing committee of the society expired. It is the specific case of the petitioners that it is essential for proper management of the Co-operative Society that election of the managing committee is held and a governing body is constituted.

A counter affidavit has been filed on behalf of the State of Bihar stating therein that as the society failed to take steps for conducting election after expiry of the life of the erstwhile managing committee and because malfunctioning of the management of the society was reported by the Joint Registrar, Co-operative Society, Bhagalpur Division, a



recommendation was made to the Bihar State Co-operative Tribunal to dissolve the society. It has been stated in the counter affidavit that the report of the Joint Registrar, Co-operative Society, Bhagalpur Division revealed that the society was functioning contrary to the provisions of the Act and the society had placed several incorrect facts in its audit report. The Registrar, Co-operative Society, taking into account all such facts formed an opinion that it was a fit case for dissolution of the Co-operative Society and accordingly sought an explanation/objection from the office bearers/members of the society asking, as to why, the society be not dissolved. The notice was published in the newspaper also whereafter the explanation was submitted by the society which was not found satisfactory.

The Registrar, Co-operative Society, thereafter, invoking Section 44 of the Act applied to the Tribunal for an order dissolving the Co-operative Society. It is the stand of the State of Bihar that since the matter is pending before the Tribunal, the petitioners will be well advised to appear before the Tribunal and pursue the matter before the Tribunal.

Learned counsel appearing on behalf of the petitioners has submitted that pendency of an application before the



Tribunal for dissolution of the society itself cannot be a ground for not holding the election of the society. He has drawn my attention to a rejoinder affidavit filed on behalf of the petitioners with reference to Annexure-20 thereof to submit that the Joint Registrar, Co-operative Society vide his letter dated 06.07.2018 addressed to the District Co-operative Officer, Munger had specifically mentioned that there was no stay by a competent authority nor there was any other justifiable reason available for not taking steps for holding election of the Co-operative Society. He has also drawn my attention to the counter affidavit filed on behalf of the Bihar Election Authority wherein it has been stated that vide letter dated 24.09.2019, the Authority had also requested the Registrar, Co-operative Society, Bihar to send the proposal for election of the society in question. Subsequently, on 07.04.2021 also the Registrar, Co-operative Society was reminded by the Election Authority to send proposal for election. It has been stated that since the proposal for election of the society in question has not been made available to the election authority, the process for conducting the election could not be initiated. In paragraph 15 of the counter affidavit, the State Election Authority has briefly mentioned the process for conducting the election in question, as fixed by the State



Election Authority, under which the concerned Regional Officer under whom the society is registered, is under obligation to make available the proposal for election in prescribed format along with election fee to the State Election Authority. Only after receipt of election proposal, the programme for modification of voter list of the society is announced by the State Election Authority and after final publication of voter list, the election programme is notified.

In my opinion, the stand taken on behalf of the State of Bihar is wholly unacceptable. Merely pendency of an application filed by the Registrar, Co-operative Society before the Tribunal to dissolve the Co-operative Society cannot be a ground for not holding the election. The respondents cannot obstruct holding election of the society till the society exists and not dissolved in accordance with law.

In result this writ application is allowed.

Accordingly, the respondent no. 2 (Registrar, Co-operative Society) is directed to ensure that all necessary steps are taken for holding election of the Co-operative Society in question without any further delay. The Court is not prescribing any timeline for the present but it is observed that all the respondents shall be under obligation to proceed with utmost



expedition towards conduct of election. It goes without saying that the parties shall be at liberty to approach the Tribunal for passing appropriate order on the application for dissolution of the Co-operative Society.

There shall be no order as to costs.

Learned counsel for the petitioners has submitted that he does not intend to press I.A. No. 01 of 2021 and seeks to withdraw the same with a liberty to raise all such plea which have been raised in the said application before the appropriate proceeding, if any.

I.A. No. 01 of 2021 is accordingly dismissed, as not pressed with the liberty as sought for.

(Chakradhari Sharan Singh, J)

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