

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10178 of 2021

Ashok Kumar Sinha son of Late Madhusudan Prasad Sinha Resident of C/55,
Road No. 4E, Sheikhpura, A.G. Colony, Ashiana Nagar, Patna, P.S. Shastri
Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Registrar Cooperative Societies, Bihar, Patna.
3. The Bihar State Election Authority through the Joint Secretary, 32, Harding Road, Patna 800001.
4. The Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna- 800001.
5. The Joint Secretary, Bihar State election Authority, 32, Harding Road, Patna- 800001.
6. The District Officer Patna - Cum- The District Election Officer (Cooperative Societies), Patna.
7. The District Cooperative Officer, Patna.
8. The Block Development Officer Patna, Sadar- cum- election Officer (Cooperative Societies), Patna Sadar, Patna.
9. Rajendra Kumar son of late Budhan Mahto R/o. A/78, A.G. Colony, Patna - 800025, P.S. Shastri Nagar, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Jha, Adv Mr. Ram Nibash Pd., Adv
For the BSEA	:	Mr. Mukesh Kumar, Adv
For the State	:	Mr. Tripurari Nath Ambastha, AC to SC-26
For the Respondent No.9:	:	Mr. Awadhesh Kumar Pandit, Adv

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 21-12-2021 Bihar State Election Authority Act, 2008 has been

enacted creating Bihar State Election Authority, akin to the State

Election Commission entrusted with the duty and responsibility



of holding elections to cooperative societies and other bodies as stipulated therein. Section 4 of the Act vests with the Election Authority, power of superintendence, direction and control for conduct of all elections to the bodies including cooperative societies.

The petitioner is a member of Patna branch, A.G. Cooperative Society Limited Patna, a society registered under the Cooperative Societies Act, 1935. He has put to challenge an order dated 18.03.2021 issued by the Bihar State Election Authority under the signature of its Joint Secretary, whereby an election of the Cooperative Society held on 30.01.2021 (wrongly mentioned 31.01.2021 in the order) has been held to be *void ab initio*. The petitioner was elected as Secretary of the said cooperative society in the said election held on 30.01.2021.

On perusal of the said order dated 18.03.2021 which has been brought on record by way of Annexure-4 to the writ petition, it appears that the same has been passed in the light of an earlier notification dated 25.01.2021 issued by the State Election Authority (Annexure-5), whereby election of the said Patna Branch, A.G. Office Housing Cooperative Society was stayed because of unavoidable reasons/circumstances.

Learned counsel appearing on behalf of the petitioner



has submitted that the notification dated 25.01.2021 is *per se* illegal as it does not specifically disclose the reason why the election of the society was decided to be stayed. He further contends that the Election Authority has no jurisdiction to issue notification in the nature of the notification dated 25.01.2021, staying the election process. Assailing the impugned order dated 18.03.2021, he has submitted that the said order is unsustainable having been passed without giving the petitioner any opportunity of hearing. He has further submitted that the petitioner was not knowing about issuance of the notification dated 25.01.2021 and even the officials who had participated in the conduct of election were unaware about the notification issued by the Election Authority staying election of the society.

We are not convinced with the submission advanced on behalf of the petitioner that the impugned order dated 18.03.2021 suffers from any illegality on the ground that the previous notification dated 25.01.2021 was not made known to the petitioner and other concerned officials. It is evident on reading of Annexure-5 that the said notification, dated 25.01.2021 was eGazetted and was communicated to all authorities including officials of the State Government.

The petitioner has himself stated in the writ



application that the District Cooperative Officer was unaware of the said notification dated 25.01.2021 and that the petitioner learnt that the Election Officer was also not aware of the stay order, despite service of stay order dated 25.01.2021 through e-mail in his office as the concerned staff missed to place the e-mail notice before the Election Officer.

Section 4 of the Act reads as under:

4. Superintendence, Direction and Control.- (1)

The Election Authority shall have power, authority and jurisdiction for exercising superintendence, direction and control of the preparation of electoral rolls for, and conduct of all elections to bodies such as Co-operative Societies, Shiksha Samiti or any other institution, organization, establishment, which may be entrusted to it by the State Government.

(2) The conditions of service other than tenure of the Chief Election Officer of the Election Authority shall be such as the State Government may by rules determine.

(3) The Government shall, when so requested by the Election Authority, make available to it such officers and staff as may be necessary for discharge of functions conferred on it under this Act.

Apparently power of superintendence, direction and control vests with the Election Authority by virtue of Section 4



of the Act. In exercise of the said order, admittedly the notification dated 25.01.2021 was issued. Despite the said notification dated 25.01.2021, the election was held on 30.01.2021. The said election, in our view, has been rightly held to be *void ab initio* in the order dated 18.03.2021 passed by the Election Authority as the same cannot be said to have been held under the direction, control and supervision of the said Authority. The existence of the said stay order dated 25.01.2021 is not in dispute. On the ground that the officials and the petitioner were unaware of the said notification cannot validate the election held on 30.01.2021, contrary to the order of the stay dated 25.01.2021. For the reasons aforesaid, we do not find that any case of interference by this Court is made out in a proceeding under Article 226 of the Constitution of India.

This application is accordingly dismissed.

We, however, observe that let State Election Authority ensure that election of the cooperative society in question is held as early as practicable, in accordance with law.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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