

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1616 of 2021

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Laxmi Sahani, S/O Late Asharsi Sahani, R/o Village and P.S.- Umagaon, P.S.- Harlakhi, District- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Co-operative Department, Government of Bihar, Patna
2. The Registrar, Co-operative Department, Bihar, Patna
3. The Bihar State Election Authority, Patna
4. The Deputy Registrar (Cane), Co-operative Societies, Bihar, Patna
5. The District Fisheries Officer, Madhubani
6. The Block Development Officer, Harlakhi-cum-Election Officer (Co-operative Societies), Harlakhi, Madhubani
7. Harlakhi Prakhand Matashyajivi Sahyog Samiti Ltd., Harlakhi, Madhubani through its Secretary
8. Mohit Sahni, S/o Late Mahendra Sahni, R/o Village-Kamalavarpatti, P.O. + P.S.- Harlakhi, District- Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Rakesh Kumar Jha, Advocate with Mr. Bindhyachal Rai, Advocate Mr. Vikash Kumar, Advocate
For the S t a t e	:	Mr. Uday Shankar Sharan Singh, G.P.-19
For Respondent No.8	:	Mr. Amit Shrivastava, Senior Advocate with Mr. Chandan Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-11-2021

The petitioner is seeking quashing of an order dated 13.03.2020 passed by the Deputy Registrar (Cane), Co-operative



Societies, Bihar, Patna (Respondent No.4) in Election Dispute Case No.173/2017, whereby his election petition for setting aside the election of Respondent No.8 to the post of Secretary, Harlakhi Prakhand Matasyajivi Sahyog Samiti Ltd. (“Society”, in short), has been rejected.

2. The Society is a registered Society under the Bihar Co-operative Societies Act, 1935.

3. The petitioner had challenged election of Respondent No.8 to the said post mainly on the ground of him being a defaulting voter and, therefore, disqualified to file nomination. The petitioner had also contested the said election and had lost to Respondent No.8. The petitioner’s election petition has been rejected mainly on the ground that the question as to whether the petitioner was a defaulter or not, could have been decided by the competent authority before the process of election had begun and such dispute could not be gone into in an election petition under Section 10 of the Bihar State Election Authority Act, 2008 (“the Act of 2008”, in short), relying on a Single Bench decision of this Court rendered on 08.02.2016 in CWJC No.10137 of 2015 (***Ram Dhyani Yadav vs. The State of Bihar & Ors.***).

4. A counter affidavit has been filed on behalf of Respondent No.8, wherein it has been stated that there had been no



determination of individual liability of Respondent No.8 requisite for holding him a defaulter.

5. Mr. Rakesh Kumar Jha, learned counsel appearing on behalf of the petitioner has submitted that Respondent No.8 as Secretary of the erstwhile Committee of the Society had collected revenue from the settlee members but had not deposited the same in the relevant account of the State Government, before filing of his nomination papers. He has also argued that Respondent No.8 himself was a settlee and he had not deposited settlement amount, before filing of the nomination papers, in the account of the Society and, therefore, he was a defaulter as on the date of filing of nomination papers. He has referred to Section 12(1) of the Act of 2008 to contend that election of a candidate is liable to be declared void on the ground, *inter alia*, that on the date of election, a returned candidate was not qualified or was disqualified to be chosen as a member under the Act. He has, thereafter, referred to Rule 21-N of the Bihar Co-operative Societies Rules, 1959 (in short, “the 1959 Rules”), which disqualifies a person to file nomination papers for election to fill a seat, if he is disqualified for being elected under the provisions of the Act, Rules or the Bye-laws of the Society. Referring to Rule 23(1)(b) of the 1959 Rules,



he would contend that a person, who is a defaulter to the Society, is not eligible for election to the Managing Committee.

6. The summary of his argument is that by virtue of Rule 23(1)(b) of 1959 Rules, as Respondent No.8 was a defaulter, he could not have filed nomination papers by operation of Rule 21-N thereof. He has accordingly submitted that Respondent No.4 ought to have declared election of Respondent No.8 void as the petitioner was able to establish before Respondent No.4 in the election petition that Respondent No.8 was a defaulter, which is a ground for declaration of election void under Section 12(1)(a) of the Act of 2008.

7. Mr. Amit Shrivastava, learned Senior Counsel appearing on behalf of the contesting Respondent No.8 has, on the other hand, submitted that Respondent No.4 has rightly rejected the petitioner's election petition in the absence of any determination in accordance with law that Respondent No.8 was a defaulter. He has further submitted that since the petitioner himself had contested the election, he had adequate opportunity to raise objection at the time of scrutiny of nomination papers by the competent authority. He having not raised any such objection and participated in the election is estopped to raise objection of disqualification of Respondent No.8 after declaration of election



results. He has submitted that Respondent No.8 cannot be termed a defaulter, in any view of the matter, for application of Rule 21-N of the 1959 Rules. He has relied on a Division Bench decision of this Court in the case of *Smt. Shamshad Khatun v. State of Bihar*, reported in **2010(1) PLJR 929**, in support of his contention that it is not permitted by the petitioner to raise objection in respect of disqualification of Respondent No.8 after having participated in the election and thus having taken a chance to be elected. He has submitted that Respondent No.4 has rightly taken into account the Single Bench decision of this Court in the case of *Ram Dhyan Yadav vs. The State of Bihar & Ors.(Supra)*, wherein the Court sustained a challenge to an order setting aside an election on similar ground of disqualification holding that in the absence of any such dispute prior to election having been raised and decided, the election could not have been declared void under Section 12(1) (a) of the Act of 2008.

8. After having heard learned counsel for the parties, we are of the opinion that the impugned order does not deserve interference by this Court in the present proceeding on the sole ground that the petitioner, at the time of filing and scrutiny of nomination papers, had not raised any objection in relation to



disqualification of Respondent No.8 on any ground, though he had such opportunity under Rule 21-M of the 1959 Rules.

9. Learned counsel for the petitioner has not disputed the contention that despite he having an opportunity of raising objection under Rule 21-M of the 1959 Rules, had failed to do so. The petitioner having not raised such objection, in our opinion, he cannot question election of Respondent No.8 on the ground of his disqualification subsequently.

10. Mr. Shrivastava has rightly relied on Division Bench decision of this Court in the case of **Smt. Shamshad Khatun** (supra), paragraph 21 of which reads as under:

“21. Applying the aforesaid principle to the facts of the present case there can be no room for doubt that the right could be waived by the elected candidate and she has done so by her express conduct. Quite apart from the above this Court cannot be oblivious of the fact that the appellant had participated in the meeting by taking a chance and 12 members voted against her. It is also apt to note all the members had been served and they had participated. The requisite majority had voted against her. Ergo, there is no justification or warrant to interfere in the proceeding of No Confidence Motion in exercise of the extraordinary and equitable



jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.”

Further, we concur with the view expressed in the case of **Ram Dhyan Yadav** (supra), relevant portion of which reads as under:

“As I have already indicated the lapse already stands admitted by the Registrar, Cooperative Societies. It is not in dispute that the disqualification so alleged against the petitioner was ever contested before the proper forum by filing an appropriate application with such prayer. The election petitioner has taken a short route to question the election of the writ petitioner by taking recourse to the disqualification clause present in rule 23(1) of ‘the Rules’. No doubt rules 24 and 25 of ‘the Rules’ disqualifies a person from holding membership of the society no sooner an order of disqualification is passed but then such finding has to be passed in a duly constituted proceeding and not in an election dispute and until such time any such opinion is recorded by the appropriate authority in a duly constituted proceeding, a returned candidate cannot be ousted. Considering the nature of allegation, in my opinion, the election petition itself was not maintainable for it raises an electoral



dispute while seeking an answer on disqualification of membership. The election petitioner was knocking a wrong forum for the nature of grievance raised.”

11. In our considered view, in the absence of any determination that Respondent No.8 was a defaulter and in the absence of any objection in this regard taken by the petitioner at the time of nomination, the Respondent No.4 has rightly rejected the petitioner’s election petition.

12. In the background of aforementioned discussions, this application, in our opinion, has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
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