

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8792 of 2022

1. Rajendra Singh @ Rajendra Prasad Son of Amir Singh R/o Ward No.- 12, Kanahauli Vishanpars, P.S.- Mahua, District- Vaishali at present working Chairman of Kanahauli Vishanpars Primary Agriculture Co-operative Society, Block- Mahua, District- Vaishali.
2. The Kanahauli Vishanpars Primary Agriculture Co-operative Society Block- Mahua, District- Vaishali through its working Chairman.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Department, Government of Bihar, Patna.
2. The Registrar Co-operative Societies, Bihar, Patna.
3. The District Magistrate Vaishali.
4. The Joint Registrar Co-operative Societies, Tirhut Division, Muzaffarpur.
5. The District Co-operative Officer Vaishali.
6. The Block Development Officer Block- Mahua, District- Vaishali.
7. The Block Co-operative Extension Officer Mahua, Vaishali.
8. The Circle Officer Mahua, Vaishali.
9. The Bihar State Election Authority through the Chief Election Officer, Bihar, Patna.
10. The Secretary Bihar State Election Authority, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr.Krishna Kant Singh, Advocate
For the Respondent-State:	Mr.Uday Shankar Sharan Singh, GP-19
	Mr. Uday Bhan Singh, AC to GP-19
For the respondent no.9 :	Mr. Mukesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 27-09-2022

Heard Mr. Krishna Kant Singh, learned counsel for
the petitioners, Mr. Uday Bhan Singh, learned AC to GP-9 for
the State and Mr. Mukesh Kumar, learned counsel for the Bihar



State Election Authority.

2. In the present application, the petitioners have prayed for the following reliefs:

(i) For issuance of a writ in the nature of Mandamus directing the concerned respondent authorities to make necessary correction in the voter list of Primary Agriculture Co-operative Societies, Kanahauli Vishanparsi, Block- Mahua, District- Vaishali (hereinafter referred to as the 'PACS') by deleting the name of 111 persons who are dead as also 213 persons who are not the resident of the concerned Panchayat in which the PACS is situated and also to include the names of 567 persons who are the members of the said PACS since the final voter list has been published without considering the claim of the petitioner and aggrieved persons as would be evident from Annexure -11 and 12 to the present writ application.

(ii) For further directing the concerned



respondent authority that after making necessary correction in the voter list of the PACS and to issue revised voter list/ corrigendum and allow the persons who are the valid members of the PACS to contest the election of the Chairman of the PACS which is to be held and to allow them to participate in the voting and till then the election process for the PACS in question be stayed.

(iii) For directing the concerned respondent authority not to proceed with the election process for the post of Chairman of the PACS in question until the necessary corrections are carried in the voter list and after considering the objection raised by the petitioner No. 1 and others as admittedly from the record it would appear that inspite of repeated direction of the respondent No. 11, the concerned authorities at the district level as well as Block level have not complied with the direction and yet the respondent no. 10 and 11 knowing fully well that the direction



has not been carried out are proceeding with the election and to further hold and declare that any order passed by the concerned authority which is in complete violation of the rules and procedure prescribed as also without considering the claim of the petitioner is illegal and not sustainable in the eye of law.

(iv) Further to hold that the very initiation of the election process of the PACS in question is illegal as the same is contrary to Section 14(a) of the Bihar Co-operative Society Act, 1935.

(v) Further for issuance of any other appropriate writ/writs, order/orders, direction/directions for which the petitioners are entitled to in the facts and circumstances of the case.

3. The petitioners have filed present application in representative capacity. The grievance of the petitioners is regarding non-inclusion of large number of voters in the voter-list. The further grievance of the petitioners is that 111 persons



who are dead as also 213 persons who are not the residents of concerned Panchayat in which PACS is situated have been included in the voter list of Kanahauli Vishanparsi Block-Mahua. The vacancy to the post of Chairman of the aforesaid PACS has arisen due to the death of Chairman of PACS on 02.01.2020. It is not in dispute that the election process relating to PACS in question has commenced and the nomination papers for the election to the post of Chairman have already been filed.

4. Section 10 of the Bihar State Election Authority Act, 2008 which governs the election relating to PACS provides that the election to any office of a co-operative society shall not be called in question except by way of an election petition as prescribed. Similar provision is there under Rule 11 of the Bihar State Election Authority Rules, 2008. There being specific provision under Section 10 of the aforesaid Act and Rule 11 of the aforesaid Rules, no election can be called in question except by an election petition.

5. Right from the beginning, Hon'ble Supreme Court has taken a firm stand that the Court would not interfere in the election process if it is started.

6. In ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***, AIR 1952 SC 64, the nomination



paper of appellant for election to the Madras Legislative Assembly was rejected by the Returning Officer. The appellant challenged the rejection of nomination paper by filing a writ petition in the High Court, which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning Officer on account of Article 329 (b) of the Constitution which says that no election to either House of Parliament or to either House of the Legislature of the State shall be called in question except by an election petition presented to the such Authority and in such manner as may be provided for by or under any law made by the appropriate legislature. In appeal, a six-judge Bench of the Hon'ble Supreme Court examined whether the writ petition would be maintainable at the initial stage against an order rejecting the nomination papers. After hearing the parties the Court observed:

“the law of elections in Indian does not contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter



which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any court.”

7. In *Supreme Court Bar Assn. v. B.D. Kaushik*, (2011) 13 SCC 774, the Hon’ble Supreme Court held that since 1952, this court has authoritatively laid down that once election process has started the court should not ordinarily interfere with the said process by way of granting injunction.

8. In *Shaji K. Joseph v. V. Viswanath*, AIR 2016 SC 1094 while considering election to Dental Council of India under Section 3(a) of the Dentists Act, 1948, the Hon’ble Supreme court observed:

“ So far as the issue with regard to eligibility of Respondent no. 1 for contesting the election is concerned, though prima facie it appears that Respondent no. 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.”

9. Regard being have to the settled position of law with regard to entertainment of a writ petition in an election



matter where the election process has commenced, we are not inclined to entertain the present petition as it involves purely an election dispute.

10. The writ petition is, accordingly, dismissed with liberty to the petitioners to prefer an election petition after the election is over in accordance with law.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2022
Transmission Date	NA

