

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.464 of 2023

=====

Mitari Devi, wife of Sri Ajab Lal Mandal, resident of Village Khajana, P.O. Dhankuria, P.S. Belhar, District Banka 813207.

... .. Petitioner/s

Versus

1. The State Election Authority, Bihar Patna through the Chief Election Officer, Sri Girish Shankar.
2. The Secretary, the State Election Authority, Bihar Patna.
3. The Registrar, Co-operative Societies, Bihar Patna.
4. The District Magistrate cum District Election Officer, Banka.
5. The District Co-operative Officer, Banka.
6. The Block Development Officer cum Election Officer, Fullidumar.
7. The Chairman, Fullidumar Fisheries Co-operative Society Ltd.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate
For the Respondent/s	:	Mr. Mahtab Alam, AC to SC-20
For the State Election Authority	:	Mr. Mukesh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

3 01-02-2023 Heard Mr. Chakrapani, learned counsel for the petitioner, Mr. Mukesh Kumar, learned counsel for the State Election Authority and Mr. Mahtab Alam, learned AC to SC 20 for the State.

2. The petitioner has moved the Court for the following reliefs:

“a. For issuance of order(s), direction(s), writ(s) particularly in the nature of writ of Certiorari for quashing the memo



no. 2324/Patna dated 26.12.2022 passed by the Chief Election Commissioner, Patna to the extent that 309 persons had not been made as new members whereas only 70 persons had been directed to be made as new members on the ground that 309 persons had paid only Rs. 1 as member fee and not paid Rs. 10 as share money despite the fact that in the said corporation society Ltd., there were previously 800 members and among them there are many members who had also paid Rs. 1 as member fee and they are member. Hence, this act of the respondent authorities are pure discriminatory and arbitrary order and therefore, not sustainable in the eye of law as is also in contravention to Article 14 of the Constitution of India.

b. For issuance of order(s), direction(s), writ(s) particularly in the nature of writ of mandamus for directing the respondent authorities to incorporate the names of 309 new members in the Fullidumar Fisheries Co-operative Society Ltd. (herein after referred to be the society), which was decided in Management Committee meeting held on 21.05.2022 i.e. before the cut off date of 30.04.2022 and subsequently their names may also be added in the voter list so that they may also be able to exercise their votes and share their hands in electing their representative and a concept of Universal Adult Franchise which has been stipulated



under Article 326 of the Constitution of India may be followed, which is the basis for elections to all levels of the elected government.

c. For any other relief(s) for which the petitioner are entitled for.”

3. In order dated 25.01.2023, the Court had recorded the following:

“2. After some arguments, learned counsel for the Authority prays for a short adjournment to explain the discrepancies, as pointed out by learned counsel for the petitioner, in terms of the fact that various members have not deposited the share money though their names have been included in the voter list.”

4. Today, learned counsel for the petitioner submitted that in view of the stand taken in the counter affidavit, it is apparent that uniform standard has not been applied with regard to inclusion and exclusion of persons from the voters list, based on their having deposited the membership fee and share amount. It was submitted that out of the 379 persons, who had moved for inclusion of their names, only 70 persons have been found to have satisfied the twin requirement of having become member by depositing Rs. 01/- and also having deposited Rs. 10/- for a share certificate whereas, the remaining 309 have been unsuited on the ground that they have only deposited Rs. 01/-.



5. Learned counsel for the State Election Authority submitted that they have confined the scrutiny only to the 379 persons. However, with regard to the remaining 800 persons only 512 persons having satisfied the twin requirement, how the rest persons have been allowed to continue in the voter list could not be explained by learned counsel.

6. The Court has been informed that the election is due to be held tomorrow morning.

7. A plea has been raised on behalf of the respondents that the election process has started and should not be interfered with.

8. The Court does not find such objection to be tenable in the peculiar facts and circumstances of the present case for the reason that it cannot allow a procedure, that too, of election to continue when *prima facie* serious discrepancies have been brought to the notice of this Court, which have not been rebutted, so as to frustrate the spirit of the law that a person who is entitled to vote is not prevented to vote and persons who are not entitled to vote are not permitted to vote. Thus, the Court would not relegate the aggrieved party to a later proceeding by approaching the competent forum under an election dispute when the same can be corrected at the threshold itself.



9. Thus, on an overall circumspection and balancing the equities without disturbing the election, let the State Election Authority scrutinize the entire voter list and apply a standard uniform policy with regard to who are eligible to be included in the voter list and who are to be excluded. Based on the decision of the State Election Authority with regard to the persons who are legally entitled to be included in the voter list, the election scheduled for tomorrow shall be conducted. The present exercise be conducted at the level of the State Election Authority today itself and communicated to the Returning Officer prior to the voting scheduled for tomorrow.

10. The writ petition stands disposed off.

11. The order having been passed in the presence of the parties, the same shall be communicated to the respective authorities by their counsels.

12. The final voter list approved by the Election Authority in terms of the exercise indicated above shall be pasted on the notice board of the venue where the election is scheduled to be held at-least an hour prior to the start of the voting.

13. The Court would further clarify that this order is being passed in the larger public interest and the Court has not



scrutinized individual cases which is for the State Election Authority to decide. The only objective of the Court in passing the order is to ensure that the authority takes a decision which is uniform without any pick and choose.

14. Pending Interlocutory Applications, if any, stand disposed off.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

shivank/uday-

U			
---	--	--	--

