

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7658 of 2023

Md. Shafique Alam Son of Late Akbar Ali @ Munshi Akbar Ali, Resident of Mohalla- Sipahi Tola near Jama Masjid, Banghag, Police Station-K. Nagar, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Co-Operative, Govt. of Bihar, Patna.
2. The Registrar, Co-Operative Societies, Department of Co-Operative, Govt. of Bihar, Patna.
3. The District Magistrate-cum-Returning Officer, Purnea.
4. The Sub-Divisional Officer-cum-Election Officer (Co-Operative Societies), Purnea.
5. The District Co-Operative Officer, Purnea.
6. The Secretary, State Election Authority, 32 Harding Road, Patna.
7. The Chairman, The District Central Co-Operative Bank Ltd. Purnea.
8. The Managing Director, The District Central Co-Operative Bank Ltd. Purnea.
9. Ali Reza, son of Md. Sharif Hussain, Chairman, District Central Co-Operative Bank Ltd Purnea. Resident of Village- Gaiyari, Police Station-Araria, District- Araria.
10. Mazharul Haque, son of Abdul Hamid, Vice-Chairman, District Central Co-Operative Bank Ltd Purnea. Resident of Village- Mahmadia, Police Station-Dagarua, District- Purnea.
11. Rajeev Ranjan, son of Sri Sita Ram Yadav, Director, District Central Co-Operative Bank Ltd Purnea. Resident of Village- Kalwa, P.O.-Pipra, Via Farbisganj, Kothihat Road, Farbisganj, District- Araria.
12. Usha Devi, W/o Sri Choudhary Manoj Kumar Yadav, Director, District Central Co-Operative Bank Ltd Purnea. Resident of Village- Sidhimari, Block Dighalbank, District- Kishanganj.
13. Prakash Kumar Bharti, son of Late Yugeshwar Paswan, Director, District Central Co-Operative Bank Ltd Purnea. resident of Village- Mazra, P.O. B.K. Asthan, Police Station-K. Nagar, District- Purnea.
14. Akhatar Hussain, son of Safir Uddin, Director, District Central Co-Operative Bank Ltd Purnea. resident of Village- Bhagwanpur, Bairgachi, Police Station- Jokihat, District- Araria.
15. Sarfaraz Alam, Son of Fajlu Rahman, Director, District Central Co-Operative Bank Ltd Purnea. Resident of Village and P.O. Pothimari, Laxmipur, District Kishanganj.



16. Binod Kumar Singh, son of Sri Ramanand Singh, Director, District Central Co-Operative Bank Ltd Purnea. resident of Village and Post- Mirjapur, Police Station- Baunshi, District- Araria.
17. Ramanand Mahaldar, son of Sri Sampat Mahaldar, Director, District Central Co-Operative Bank Ltd Purnea. Resident of Village- Sarra, P.O.- Gadhbanaili, Police Station- Kasba, District- Purnea.
18. Mithilesh Kumar, son of Sri Jagdish Prasad Yadav, Director, District Central Co-Operative Bank Ltd Purnea. resident of Village- Raghunathpur North, Block- Bhargama, District- Araria.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh, Advocate
Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s : Mr. Sanjay Kumar, AC to GA- 13
For the Election Authority : Mr. Mukesh Kr. Thakur, Advocate
For the Respondent No.8 : Mr. Rakesh Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 03-10-2023

Heard Mr. Aditya Narayan Singh, learned counsel for the petitioner and Mr. Sanjay Kumar, learned counsel for the State. The State Election Authority is represented by Mr. Mukesh Kumar Thakur. Mr. Rakesh Kumar Jha, learned counsel appears on behalf of respondent no.8.

2. The petitioner claimed to be one of the candidate contested for the post of Director (male) unreserved category seeks issuance of an appropriate writ, order or direction to hold and declare election dated 12.04.2023, conducted for the constitution of Managing Committee of District Central Cooperative Bank Ltd., Purnea as null and void.

3. The grounds set forth to challenge the Election



dated 12.04.2023 are mainly revolves around non-compliance of the Rules 21(S)(1) and 21(S)(9) of the Bihar Co-operative Societies Rules, 1959.

4. It is submitted on behalf of the petitioner that the Bihar State Election Authority while conducting the election, in question, has completely ignored the mandatory provisions of Rules 21(S) of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as 'the Rules, 1959'), as the ballot paper containing the name of contesting candidate was without any election Symbol against the name of the contesting candidates. The provision of Rule 21(S)(1) contemplates that the voter shall mark "X" on the election symbol of the contesting candidate in whose favour a voter desires to cast his vote, but despite the mandatory provision, as noted above, instead of marking "X" the ballot shows "Y" tick marks. Besides the aforesaid fact, the non-allotment of election symbol against the name of the contesting candidate has created a lot of confusion amongst the voters, who are illiterate and unable to read the name of the contesting candidates.

5. Learned counsel for the petitioner also submits that since the mandatory rules of the Rules, 1959 has not been followed, which goes to the root of the entire election and thus



the High Court can very well look into the matter and pass necessary order in holding the entire election, in question, as null and void.

6. While summing up the submissions, learned counsel for the petitioner again submitted that the High Court under Article 226 of the Constitution of India is not precluded to entertain such petition, if the very order/action of the authority concerned is wholly without jurisdiction; nonetheless the alternative remedy is not a bar in invoking the extraordinary jurisdiction under Article 226 of the Constitution.

7. In support of the aforesaid submission, reliance has also been placed on a judgment rendered by the Hon'ble Supreme Court in the case of **Harbanslal Sahni Vs. Indian Oil Corporation Ltd., (2003) 2 SCC 107** wherein while dealing with the Principle of rule of exclusion of writ jurisdiction on account of availability of an alternative remedy, the Hon'ble Supreme Court has held as follows:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in



spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or; (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. [See Whirlpool Corpn. v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

8. Per contra, learned counsel representing the State Election Authority, at the outset, submits that once the election has already conducted and the result has been declared and the matter in dispute admittedly an election dispute, the present writ petition is not maintainable in any view of the matter. He has drawn the attention of this Court to Sub-Section 6 of Section 14-A of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as ‘the Act, 1935’) and with reference thereto he submitted that admittedly the election, in question, was conducted under Section 14(A) of the Act, 1935 by the Bihar



State Election Authority constituted under the Bihar State Election Authority Act, 2008 in the manner prescribed under the law. Sub-Section 6 thereof clearly stipulates as follows:

“14A(6) No election to any class or classes of registered societies notified under sub-section (1) shall not be called in question except by way of an election petition filed within ninety days from declaration of the result of such election and the same shall be decided as a dispute under section-48 of this Act. Such an election petition shall be filed before the Registrar or such other officer appointed to assist the Registrar under section-6 of this Act.”

9. He further submits that if the statute provides remedy through Election Petition for resolving the dispute raised in the present case, the petitioner ought to exhaust such remedy instead of invoking the extraordinary and prerogative writ jurisdiction under Article 226 of the Constitution of India.

10. He next submitted that the learned Co-ordinate Bench of this Court in an identical matter (**Md. Shamim Vs. the State of Bihar & Ors, 2018(1) PLJR 600**), where a candidate being aggrieved by the rejection of the nomination paper filed by him to contest the election of Araria Vyapar Mandal for the post of Chairman has preferred the writ petition and the Hon'ble Court has been pleased to hold that “as per Section 10(1)(i) of



the Bihar State Election Authority Act, 2008, Election to an office of a body shall not be called in question except by an election petition. The Bihar State Election Authority Act, 2008 and Bihar Cooperative Societies Act, 1935 are complete code in themselves. There are sufficient guidelines in the Act regarding the manner in which the challenge to elections can be raised, once the legislature has provided for challenge to the election by raising a dispute under Section 48 thereof then the challenge to the election by way of filing of a writ petition under Article 226 of the Constitution would not be maintainable, as petitioner can question the legality of the rejection of nomination paper on all available materials, including the grounds taken in the present application.” The learned court has finally held that the petitioner ought to have availed the efficacious remedy before the authority while dismissing the writ petition.

11. At this stage, learned counsel further submitted that in case, if the Court does not find merit consideration to the submissions made by the writ petitioner then he may be allowed to file an Election petition challenging the election, in question.

12. The said contention of the writ petitioner has vehemently refuted by the learned counsel for the State Election Authority and he submits that once the statutory period



has been prescribed under the Act itself for filing an election petition, the same cannot be extended as Rule 14(A)(6) clearly prescribed that an election petition must be filed within 90 days from the declaration of the result of such election.

13. In support of the aforesaid contention, he heavily relied upon a judgment passed by the learned Division Bench of this Court in the case of **Sitaram Sah Vs. the State of Bihar & Ors, 1995(1) PLJR 96** wherein while adjudicating the identical issue, the learned court has held that the provision of Limitation Act, 1993 only applied to a proceeding in Court and not to appeal and application before the statutory body other than the Court such as Quasi Judicial Tribunal/Executive Authority. Thus, in any view of the matter, the statutory period of limitation cannot be extended once the provision of Limitation Act, 1993 is not applicable.

14. At this juncture, Mr. Singh, learned counsel representing the petitioner made a different submission that under the Bihar Self Supporting Cooperative Societies Act, 1996 any dispute relating to elections of a Cooperative Society can be referred to the Cooperative Tribunal for the decision and thus the dispute raised before the Court may also be referred to the Cooperative Tribunal for its disposal.



15. This Court does not find merit in such submission, as the election dispute relating to the Managing Committee of the Society, raised before this Court, is not a registered Cooperative Society under the Bihar Self Supporting Cooperative Societies Act, 1996 and the election, in question, was conducted under the provisions prescribed under Section 14(A) of the Act, 1935, which fact has never been refuted nor the same is questioned.

16. Learned counsel for the State as well as Private respondent no.8 also adopted and reiterated the submissions made on behalf of the State Election Authority.

17. Having perused the materials available on record and after giving anxious consideration to the submissions advanced on behalf of the parties, admittedly the election, in question, has held in the manner prescribed under the provision prescribed under Section 14(A) of the Act, 1935 and Sub-Section 6 thereof in unambiguous term stipulates that any election to class or classes of registered societies notified under sub-section 1 shall not be called in question except by way of an election petition, as a dispute under Section 48 of the Act before the Registrar.

18. The issue raised before this Court has been



considered in catena of judgments passed by this Court that once the Act provides to challenge the elections by raising a dispute under Section 48 of the Act, 1935, the challenge to the elections by way of filing writ petition under Article 226 of the Constitution would not be maintainable. The learned Coordinate Bench in the case of **Md. Shamim** (supra) has taken note of various judgments, including the Full Bench Judgment of this Court in **Chandeshwar Prasad & Ors Vs. the State of Bihar & Ors, 1987 PLJR 159 (FB)** whereby it has been held that the election dispute also comes squarely within the ambit of provisions of Section 48 of the Act, 1935 and thus held that even the issue of illegal rejection of nomination of the petitioner and declaration of the result can be challenged by way of filing election petition, instead of invoking extraordinary and discretionary writ jurisdiction.

19. Thus there is no doubt that challenging an election dispute without exhausting the remedy available to the petitioner under Section 14A(6) of the Bihar Co-operative Societies Act, 1935 read with Section 48 of the Act and Rule 21X framed thereunder and Section 10 of the Bihar State Election Authority Act, 2008, which mandate that challenge to the election of the Managing Committee of a Cooperative



Society can only be by means of an election petition, the writ petition is misconceived.

20. Before parting with the final outcome, it would be also apposite to note that there is no doubt that existence of an alternative remedy does not by itself bar the High Court from exercising its jurisdiction, unless the parties are able to prima facie demonstrate (a) that a writ petition has been filed for the enforcement of a fundamental right, (b) there has been a violation of the principles of natural justice, (c) the order or proceedings are wholly without jurisdiction or (d) the vires of a legislation is challenged. The Principle of alternative remedy and its exception has been reiterated in various celebrated judgments including **Whirlpool Corporation vs Registrar of Trade Marks, Mumbai & Ors, (1998) 8 SCC 1, Harbanslal Sahni Vs. Indian Oil Corporation Ltd. (2003) 2 SCC 107, Radha Krishna Industries Vs. State of Himachal Pradesh &Ors, 2021 SCC OnLine SC 334, M/s Magadh Sugar & Energy Ltd. Vs. The State of Bihar & Ors, 2021 SCC OnLine SC 801.**

21. This Court also finds that once the statutory period for filing an election petition has already been prescribed under the Act, without empowering the authority/body to extend



the period or in absence of any applicability of Limitation Act, 1963, the same ought not to be extended while exercising the prerogative writ jurisdiction under Article 226 of the Constitution, de hors the Rules, unless the Court finds exceptional circumstances.

22. In view of the aforesaid facts, circumstances and the position obtaining in law, as also the discussions made hereinabove, this Court does not find any merit in the writ petition and, accordingly, the same stands dismissed.

23. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.10.2023
Transmission Date	NA

