

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17912 of 2022

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Fekan Sahani Son of Bikaram Sahani Resident of Village- Maisaha, P.S.-
Parihar, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Bihar State Election Authority, through its Secretary, 32, Harding Road, Patna- 800001.
3. Chief Election Officer, Bihar State Election Authority, 32, Harding Road, Patna- 800001.
4. The Registrar, Cooperative Societies, Bihar, Patna.
5. The District Cooperative Officer, Sitamarhi.
6. The Election Officer-cum-Circle Officer, Parihar, Sitamarhi.
7. Parhar Prakhand Matasyajeevi Sahayog Samiti Ltd., through its Administrator-cum-Cooperative Extension Officer, Parihar, District- Sitamarhi, namely Ram Kumar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms .Mahasweta Chatterjee, Advocate
For the Respondent/s	:	Mr. Narendra Kumar, Advocate
For the SEC	:	Mr. Mukesh Kumar Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 30-10-2023

This Court has heard Ms. Mahasweta Chatterjee, learned counsel for the petitioner, Mr. Narendra Kumar, learned counsel for the State. The State Election Authority is represented by Mr. Mukesh Kumar Thakur, learned counsel.

2. The petitioner claimed to be member of Parihar Matsyajivi Sahyog Samiti (hereinafter referred to as “the Samiti”), which is a co-operative society registered under the



provisions of Bihar Co-operative Societies Act, 1935, has filed the present writ petition in representative capacity of all 244 members of the Samiti seeking a direction commanding upon the respondent nos. 2, 3, 5 and 6 to include their names in the voter list of the Samiti for the election to be conducted on 18.01.2023. The petitioner also sought a direction upon the respondents to take necessary steps to enable all 244 valid persons to exercise their voting rights in the forthcoming election to be conducted under supervision of the Bihar State Election Authority.

3. The short facts, which led to the filing of the present writ petition is that in the year 2018, on different dates altogether 251 persons filed their applications in Form (V) for admitting them as members of the society as contemplated under Rule 7 of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as the “Rules, 1959”).

4. Despite the applications having been filed, there had been no communication on behalf of the Society within 15 days, either rejecting their application or admitting them as a Member, henceforth in terms of Rule 7(e) of the Rules, 1959, the applications filed by 251 members deemed to have been accepted.



5. Taking note of the aforesaid facts and in the light of the aforementioned provisions, all the 251 persons filed Membership Appeal Case No. 138 of 2018 before the Registrar Co-operative Societies, Bihar seeking a direction to the office-bearer of the Society to accept their share value and entry fee and to issue membership certificate.

6. On the request, aforementioned, the Registrar Co-operative Societies, Bihar (Respondent No. 4) vide its order dated 13.12.2018 directed the District Co-operative Officer (Respondent No. 5) to scrutinize the matter and take necessary action.

7. In compliance thereof, the respondent no. 5 after hearing the parties directed the Managing Committee of the Samiti to admit all the 251 persons as member of the Managing Committee, who were found eligible to be admitted and issue receipts after receiving entry fee and share value. The order of the District Co-operative Officer as contained in Memo No. 526 dated 22.04.2022 is marked as Annexure – 3.

8. Despite the orders having been passed and the matter placed before the Secretary/Chairman of the “Samiti”, no action has been taken by the Society. All the persons again approached to the District Co-operative Officer but to no avail,



compelling them to approach before the Registrar Co-operative Samiti by filing second consecutive Membership Dispute Case No. 45 of 2022 for a direction to the Samiti concerned to accept entry fee and share value from them and grant receipts as also to include their names in voter list of the Samiti.

9. Having considered the submissions on behalf of the persons who filed the membership dispute case, the Registrar Co-operative Societies vide its order dated 13.09.2022 directed the Managing Committee and the District Co-operative Officer to take all necessary steps for admitting the Membership of all 251 persons and get their entry fee and share money deposited. On receipt of the aforesaid order dated 13.09.2022, as contained in Annexure – 6, the District Co-operative Officer, Sitamarhi vide its order dated 23.09.2022 (Annexure – 7) directed the Co-operative Extension Officer, Parihar-cum-Administrator of the Society to get the entry fee and share money deposited in the bank account of the Society and to communicate him about the compliance.

10. In compliance of the aforesaid order, as discussed hereinabove, the Co-operative Extension Officer, Parihar-cum-Administrator of the Society, allowed all the 244 persons to deposit the entry fee and share money and receipts were granted



to all the persons and thus, they became valid members of the Samiti as contemplated under Section 27 of the Bihar Co-operative Societies Act, 1935.

11. It is stated that, in the meantime, as five years period of earlier Managing Committee constituted in the year 2017 was to be expired in the year 2022, the respondent no. 2 vide Letter No. 717 dated 21.05.2022, announced the programme for preparation of voter list of Fisherman Co-operative Society throughout Bihar, including the Society- Respondent No. 7. The cut off date for finalisation of voter list was fixed on 30.04.2022. The election programme has also been announced fixing the dates for filing nomination on 22.07.2022 and 23.07.2022. The date of election was fixed on 04.08.2022.

12. Ms. Chatterjee, learned counsel for the petitioner submitted that, in the meantime, some of the members of the Society after having found some infirmity in fixation of time schedule in preparation of voter list has filed Dispute Case No. 24 of 2022 before the Registrar Co-operative, Bihar and vide notification No. 1360 dated 21.07.2022, the programmes scheduled for the election was stalled. As the election was stalled, all the 244 persons deposited their entry fee and share value on different dates in the month of September, 2022 and



filed a representation before the District Co-operative Officer to add their names in voter list. The petitioner also filed a petition before the State Election Authority on 10.10.2022 along with the relevant documents for extending the cut off date for preparation of voter list of the Society, in question, in view of Rule 21Y(b-1).

13. Ms. Chatterjee, further clarified that as the name of all the 244 persons could not be included in the voter list on account of the pronouncement of the scheduled of the election but due to further extension of the date of the election scheduled to be held on 18.01.2023, the date for preparation of the voter list was also required to be extended, so that the name of the petitioner be included in the voter list. She further contended that all the 244 persons, who have purchased one share and paid entry fee have become valid member of the society, entitled to exercise their voting rights, but on account of non inclusion of their names in the voter list, the respondents are depriving the valid members from their rights and entitlement, irrespective of the fact that the respective entry fee and share money has been deposited in the month of September, 2022 itself. Under the changed circumstances, where election could not be held within the stipulated period of 120 days, as contemplated under Rule



21Y(b-1) of the Rules, 1959, the respondent nos. 2, 3, 5 and 6 were under obligation to include the names of all the 244 members in the voter list.

14. It is to be noted that during the pendency of the present writ petition, the election of the Society has been conducted by the Bihar State Election Authority on 09.01.2023 and the Jalkars constituted within the blocks have been settled with the Society, but the Managing Committee has distributed the Jalkars only among the members, excluding the names of 244 persons since their names are not included in the membership list of the society.

15. In the meantime, the District Co-operative Officer has come out with another order bearing No. 1841 dated 20.12.2022, cancelling his earlier order dated 23.09.2022, contemplating that under Section 14(10) of the 1935, Act, the Administrator does not have any power to admit any person as member in the Samiti, thus, any direction passed by the Administrator for depositing their entry fee and share value to the bank account of the Samiti was per se illegal. The petitioner being aggrieved assailed the aforementioned order as contained in Memo No. 1841 dated 20.12.2022 by filing an interlocutory application bearing IA No. 01 of 2023 in the present writ



petition.

16. At this stage, Ms. Chatterjee, again submitted that all the 244 persons have deposited their entry fee and share value to the bank account of the Society, in compliance of the order passed by the Registrar, Co-operative Societies dated 16.09.2022 and only, the consequential order has been passed by the District Co-operative Officer vide his Letter No. 1478 dated 23.09.2022, consequent whereupon the follow up action has been taken by the Administrator. Hence, there was no reason or occasion for the District Co-operative Officer to cancel his own order, which was issued in compliance of the order passed by the Registrar, Co-operative Societies.

17. A counter affidavit has been filed on behalf of the respondent no. 5, with reference to the averments made therein, it is submitted that the order bearing Memo No. 1478 dated 23.09.2022 was issued while the Samiti, in question, was under supersession and the administrator was appointed to run the affairs of the Samiti. The duty of the administrator is only limited to get the election of the Society conducted and as soon as the Board is constituted, the administrator is duty bound to handover the charge to the society to the newly constituted Board. He further submits that the administrator has had no



power to enroll any member of the Society, while the Samiti was under supersession.

18. Reliance has also been placed upon a judgment rendered by the Hon'ble Supreme Court in the case of ***K Shantharaj and Anr. Vs. M. L. Nagaraj and Ors.*** reported in ***AIR 1997 SC 2925***. In view of the settled legal position, as noted hereinabove, the order passed by the District Co-operative Officer as contained in Memo No. 1841 dated 20.12.2022 does not suffer from any illegality. He lastly submits that as the election of the Society has already been held, the desiring persons have liberty to approach before the Managing Committee of the Society for granting membership as the Managing Committee is competent to grant membership.

19. Mr. Mukesh Kumar Thakur, learned counsel for the State Election Authority while addressing this Court firstly submitted that as the election has already been conducted on 09.01.2023 itself, by the Bihar State Election Authority, any dispute, either with regard to the preparation of voter list or inclusion or exclusion of the name of any person therein, can be raised before the Registrar Co-operative Societies under Section 48 of the Bihar Co-operative Societies Act, 1935. Mr. Thakur, made preliminary objection with regard to the maintainability of



the writ petition that the present writ petition filed by the petitioner in the representative capacity of 244 persons, is not at all maintainable, in view of the non-joinder of necessary parties. He has further shown the instances where the co-ordinate Benches of this Court has negated the claim of such persons, who have not become party to the writ petition, whose rights was/were at stake. He also made reliance upon the order/judgment of learned Division Bench as well co-ordinate Bench of this Court in CWJC No. 13965 of 2012 and CWJC No. 20 of 2023.

20. Having heard the parties and after perusing the materials available on record, it is evident that admittedly the date on which the entry fee and share value of 244 persons was accepted, the Samiti was under supersession and the same was done by Administrator of the Society, who has had no power to get enrolled any member in the Society. The issue in this regard has already been set at rest by the Hon'ble Apex Court.

21. Learned counsel for the respondent no. 5 has rightly placed reliance upon the judgment passed in ***K Shantharaj and Anr. (supra)*** wherein, the Supreme Court has held that, "It would be clear from the language of these provisions that the Administrator or special officer, subject to



control of any of the functions of the society, and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enroll new members of the society”.

22. It is also to be noted that subsequently, the Supreme Court in the case of *Jt. Registrar of Co. Societies Vs. T. A. Kuttappan* reported in (2000) 6 SCC 127 has reaffirmed the aforesaid mandate. In paragraph 7 thereof, the Hon’ble Supreme Court has held that “the administrator who conduct elections has enjoined under law, i.e., he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with the power to enroll new members of the Society. A co-operative society is expected to function in a democratic manner through an elected committee of management and that Committee of Management is empowered to enroll new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an administrator or a committee appointed by the



Registrar while the Committee of Management is under supersession”.

23. This Court before parting with the final outcome, cannot lose sight of the fact the none of the aggrieved persons has approached before this Court and the respondents have rightly relied upon the judgment/order(s) passed by the learned Division Bench of this Court in CWJC No. 13965 of 2012 (*Gopal Giri Vs. The State of Bihar & Ors.*) holding that, “the aggrieved voters were in no way handicapped so as to require representation by the petitioner through public interest litigation. They could have very well approached the authorities as they appear to have done and also for this Court for enforcement of their legal rights.”

24. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court does not find any reason to interfere in the impugned order dated 20.12.2022 as contained in Memo No. 1841 (Annexure – 14 to the I.A. No. 01 of 2023). This Court also finds that none of the aggrieved persons, whose statutory right(s) is/are at stake has joined the writ petition, hence, the writ petitioner can not espouse their cause seeking a writ of mandamus or certiorari, in the facts of the present case.



25. However, considering the fact that the Registrar Co-operative had already passed order and consequent thereupon, the District Co-operative Officer has passed order directing the Managing Committee to take necessary steps regarding the membership of the concerned persons and to take steps to get the entry fee and share money deposited; all the eligible persons may approach to the Managing Committee of the Society for granting membership.

26. In view thereof, the present writ petition stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2023.
Transmission Date	NA

