

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1655 of 2024

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Kush Kumar S/o-Ramcharitara Prasad R/O Ward No 13., P.O Jhanjhara, P.S.
Ghorasahan Village Barwa Kala, District East Champaran, Bihar-845303

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Bihar Cooperative Department, Government of Bihar at Patna.
2. Bihar State Election Authority, through its Chief Election Officer, Government of Bihar at Patna.
3. Registrar Cooperative Societies, Bihar at Patna.
4. District Magistrate-Cum-Chief Election Officer, East Champaran, District-East Champaran.
5. District Cooperative Officer, East Champaran, Dist.-East Champaran.
6. Deputy Development Commissioner-Cum-Nodal Officer (PACS Election), East Champaran, Dist.-East Champaran.
7. Block Development Officer-Cum-Election Officer Ghodasahan Block, P.S.-Ghodasahan, District-East Champaran.
8. Barwakal Primary Agridulture Credit Society Ltd. through its Chairman/Manager Namely Bindeshwar Singh
9. Bindeshwar Singh S/o Late Jagar Nath Singh R/o-Village-Barwa Kala, P.O.-Jhajhra, P.S.-Ghodasahan, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate Mr. Shikhar Mani, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Rajnish Prakash, Advocate Ms. Lakshmi Kumari, Advocate Ms. Rishabh Gupta, Advocate
For the Respondent/s	:	Mr.Addl. Advocate General (13)

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 24-09-2024

Heard the parties.

(A) PRAYER:

2. The petitioner has prayed for the following
reliefs:



(i) that the present writ application is being filed in the nature of certiorari for setting aside the order dated 31.08.2022/13.10.2022 passed by the court of the Learned Joint Registrar, Cooperative Societies, Bihar at Patna in Bindeshwar Singh vs. Block Development Officer. Ghodasahan and Ors. By which the election of the present petitioner has been cancelled in the light of Rule - 8(e), 9 and 24(2) of the Bihar Cooperative Societies Rules, 1959; on the ground that the Learned Court has not taken the consideration of the although the present petitioner has been convicted under Section-323 of the Indian Penal Code, 1860 however the Learned Court below has given the benefit of the Probation of Offenders Act, 1958 and absolve the present petitioner from the punishment after



due warning and gentle rebuke and therefore the present order is in violation of Rule-8(e) and in violation of the Bye- laws 7(6) of Primary Agriculture Credit Societies Bye- Laws, (ANNEXURE-P/8);

(ii) that the present writ application is being filed in the nature of certiorari for setting aside the order dated 13.09.2023, passed by the Learned Court of Joint Registrar (HQ.). Cooperative Societies, Bihar at Patna in Review Case No. 11 of 2023 by which the review petition of the present petitioner filed challenging the order dated 31 08 2022/13 10.2022 passed in Bindeshwar Singh vs. Block Development Officer, Ghodasahan and Ors. has been rejected on purely technical ground without considering the case of the petitioner on the



merit, on the ground that the review petition has been rejected on totally non-est ground, without considering the facts and circumstances of the case and thus it is the violation of principle of nature Justice, (ANNEXURE-P/9);

(iii) that the present writ application is being filed in the nature of mandamus for issuing direction to the Block Development Officer-Cum Election Officer Ghodesahan, East Champaran to appoint the present petitioner as the Chairman of the Barwakal Primary Agriculture Gredit Society Ltd. (hereinafter referred as Society/PAGE); on the ground that the present petitioner contested the election in free and fair manner and able to secure the highest number of votes in the election of PACS;



*(iv) and pass any such other order/
orders as this Hon'ble Court deem fit
and proper.*

(B) CASE OF THE PETITIONER:

4. The present petitioner is the member of the Barwakal Primary Agriculture Credit Society Ltd (henceforth for short 'the PACS') and participated in 'the PACS' Election-2019. He was able to secure the highest number of votes i.e. 802 against all the opposite members.

5. The present dispute relates to the nomination and appointment on the post of the Chairman after the completion of free and fair election of 'Barwakal PACS'. The said Society is registered under the Bihar Cooperative Societies Act, 1935 (hereinafter referred 'the 1935 Act') and the conduct of its business is carried out as per 'the said Act' Rules as also the Bye-laws framed in this regard by the Society.

6. The contention is that the Bihar State Election Authority (henceforth for short 'the Authority') under the signature of the Chief Election Officer, Patna vide its memo no. 1774 dated 31.10.2019 issued the direction to all the District Collector-Cum-District Election Officer, the Deputy Development Commissioner-Cum-Nodal Officers (PACS



Election), and the Block Development Officer-Cum-Election Officer, Bihar to conduct the election in total five phases for all 'the PACS' as the tenure was/were coming to an end.

7. The respondent no.9 on 01.12.2019 made a complaint to the Block Development Officer-Cum-Election Officer, Ghodasahan for barring the present petitioner from contesting the said election on the ground that though he has been acquitted in the **Tr. No. 21/13/GR No. 941 of 2008** by the learned Trial Court, it was set aside in **Criminal Appeal No. 03/2014**. He as such, has been finally convicted under Section-323 of the Indian Penal Code, 1860 and thus is ineligible to contest the coming PACS election. Accordingly, he be barred in the light of the Bye-laws-7(6) of 'the PACS'.

8. The further contention is that vide office letter no. 1685, dated 02.12.2019 issued under the signature of the Block Development Officer-Cum-Election Officer, Ghodasahan, the present petitioner was asked to reply to the show cause issued within 2 hours.

9. The petitioner duly replied to the said show cause to the satisfaction of the B.D.O-Cum-Election Officer, Ghodasahan clarifying that though he has been convicted under Section 323 of the I.P.C. 1860, the learned Appellate



Court at the same time, extended benefit of **Section 3 of the Probation of Offenders Act, 1958**, (henceforth for short 'the 1958 Act') and refrained from sentencing under Section 323 L.P.C. 1860. The petitioner thus submitted that he is eligible to contest the election.

10. He was accordingly allowed to contest the election which was held on 11.12.2019 and the result was declared on 12.12.2019 in which the petitioner having polled highest number of votes was declared elected.

11. The respondent No. 9 who secured second highest votes in the election filed a petition before the Court of learned Registrar, Cooperative Societies, Bihar at Patna praying for setting aside the election of the petitioner and to declare the respondent No. 9 as elected Chairman of 'the Ghodasahan PACS'.

12. The Court of Joint Registrar, Cooperative Societies, Bihar at Patna thereafter heard the parties and vide its order dated 31.08.2022/13.10.2022 in **Bindeshwar Singh vs. Block Development Officer, Ghodasahan and Ors.** has been pleased to set aside the election of the petitioner and further was declared as an ineligible candidate to contest 'the PACS' election in the light of Rule 8(e), 9 and 24(2) of the



Bihar Cooperative Societies Rules, 1959 (henceforth for short 'the Rules'). His election was declared illegal and further the learned Court also held that in the light of Section-13 of Bihar State Election Authority Act, 2008 (henceforth for short 'the 2008 Act') Respondent No. 9, namely Bindeshwar Singh has been found eligible to be appointed as the Chairman of the Ghodasahan PACS.

13. The petitioner filed a review application on 20.01.2023 before the Court of Ld. Joint Registrar, Cooperative Societies, Bihar at Patna submitting that in Criminal Appeal No. 03/2014 after upholding the conviction under Section-323 of the I.P.C., 1806 has been given the benefit under 'the 1958 Act' and as such has been absolved from the punishment under the same. However, the said Review Petition has been dismissed on the ground of limitation.

14. As the petitioner has not been disqualified from the electoral roll and therefore the question of membership of the present petitioner cannot be raised by way of election petition as held by this Hon'ble Court in C.W.J.C. No. 19687 of 2015, the present writ petition has been filed.

(C) STATE RESPONSE:

15. The counter affidavit has come on behalf of the



respondent no.6 and according to the State respondent, the petitioner filed nomination paper even after his conviction dated 16.08.2019 which was accepted by the Returning Officer and he contested the election.

16. The respondent no.-9 challenged the election of the petitioner filing case no.-203 of 2020 in the Court of Joint Registrar Co-Operative Societies Bihar, Patna on several grounds including the nomination paper showing conviction in criminal case.

17. After hearing the case and considering papers filed on record, the Joint Registrar held that the petitioner was held guilty and convicted under section 323 of the Indian Penal Code prior to filing his nomination paper. The petitioner was as such found disqualified for being member of the society on the date he was held guilty and convicted in the Criminal case in terms of Rule 8 (6), 9 and 24 (2) of Bihar Co-Operative Society Act, 1959. Consequently, his election for the post of Chairman of Barwakala Primary Agriculture Credit Society was cancelled vide order dated 13.10.2022 (Annexure- P/7 of the writ application). The petitioner filed review application which too was dismissed. As such, the writ petition be dismissed.

(D) RESPONSE OF THE RESPONDENT NO.9



18. In this case, notices were issued upon the respondent nos. 8 and 9 on 02.07.2024 and pursuant thereto, the counter affidavit of respondent no.9 has come. According to him, after the election programme was notified, the Respondent No. 9 filed objection on the nomination filed by the petitioner but the respondent no. 7, the B.D.O. cum Election Officer did not take any action.

19. Thereafter, the election process started and after completion of the election on 11.12.2019, result of which was declared on 12.12.2019, he applied for obtaining nomination form filed by the petitioner and copy of Election Result before Circle Officer on 16.12.2019 Ghodasahan, East Champaran which however, were not supplied.

20. The Respondent No. 9 thereafter filed Election Dispute No. 203 of 2020 before the Registrar, Cooperative Societies, Bihar, Patna, with a prayer to set aside the election of amongst other the petitioner herein. The learned Registrar, Cooperative Societies admitted the case and transferred the same before the Joint Registrar Cooperative Societies, Bihar, Patna. The petitioner appeared in the Election case and filed written statement. During the pendency of this case, Smt. Rampatti Devi (Respondent No. 6), Mahendra Singh



@ Mahindra Kumar, Krishna Rai, Smt. Mala Devi, Smt. Gayatri Devi, Badruddin and Smt. Punkali Devi (Respondent No. 10 to 14 and 16 of the election petition) resigned from their respective posts on 24.02.2022. Thus, the Joint Registrar, Cooperative Societies vide an order dated 31.08.2022 / 13.10.2022 set aside the election of Chairman of the Barwakala PACS, Kush Kumar (the petitioner herein).

21. A review petition came to be filed (Review Case No. 11 of 2023) before the Registrar, Cooperative Societies which was dismissed by the Joint Registrar on 31.10.2023 on the ground of limitation.

22. According to the respondent no.9, the petitioner having been held guilty and convicted in appeal, he was disqualified to file nomination and contest the election and as such the order was rightly passed and now that 'the PACS' stands superseded, the case has remained only for academic interest as no relief can be granted to the petitioner. Thus the writ petition be dismissed.

(E) FINDINGS:

23. True it is that now 'the PACS' stands superseded but any order passed in this case will have far reaching effect on the case of petitioner as to whether he will be



eligible to contest the future election or not and further whether in the light of the '1958 Act', he could have been declared ineligible to contest the election.

24. Learned counsel for the petitioner firstly took this Court to the order of conviction in Cr. Appeal No. 03 of 2014 CIS No. 03/2014 [Prashant Kumar vs. Lav Kumar and **Kush Kumar** (the petitioner herein)]. This order has been passed on 16.08.2019 against the judgment of acquittal dated 05.12.2023 passed by the learned Judicial Magistrate, 1st Class, Sikrahna, Motihari in Trial No. 21/2013 by which the accuseds were acquitted of the charges under section 323, 504 and against accused Luv Kumar under section 379 of the Indian Penal Code.

25. The Appellate Court in paras 19 to 21 held as follows:

19. So, after taking into consideration, I find that the prosecution has been able to prove its case against both accused persons Luv Kumar and Kush Kumar beyond shadow of all reasonable doubt u/s 323 I.P.C. and therefore the judgment



passed dated 05.12.2013 passed in the court learned Judicial Magistrate, 1st Class, Sikrahana, Motihari in GR No. 941/2008 (Trial No. 21/2013) is set-aside to that score and both accused persons are found and held guilty u/s 323 IPC and both are also convicted thereupon.

20. As per as the sentence is concerned both parties are co-villager and there is election nverly between them and finding that there is no previous conviction of accused persons in any other case of similar or other serious nature, I find it proper to given both accused persons Luv Kumar and Kush Kumar benefit us 3 of Probation of Offenders Act.

21. Thus, both accused persons of this case held guilty u/s 323 IPC, are directed to surrender before the concerned trial court within one



month from the date of this order and the learned Trial Court is requested to pass order u/s 3 of Probation of Offenders Act and release both accused persons after due admonition adopting the proper procedure laid down under the Probation of Offenders Act.

26. A perusal of the order would show that both the petitioner as also his brother Lav Kumar were given the benefit under section 3 of the Probation of Offenders Act.

27. Section 3 of 'the Act' read as follows:

3. Power of court to release certain offenders after admonition.—*When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both,*



under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender; it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

28. Further, Section 12 of 'the said Act' records that in case, a person having been found guilty and dealt with under the provision of section 3 or 4, they will not suffer disqualification.

39. Section 12 of 'the 1958 Act' read as follows:

12. Removal of disqualification



attaching to conviction.—

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.

30. Learned counsel submits that in view of section 12 of 'the 1958 Act' which overrides all other laws, the decision taken by the respondent dated **31.08.2022/13.10.2022 (Bindeshwar Singh vs. the Block Development Officer, Ghorasahan)** in Election Dispute Case No. 203/2020 (Annexure-P/7) as also refusal of the Review passed on **13.09.2023/31.10.2023 in Review Case No. 11 of 2023 (Kush Kumar vs. Bindeshwar Singh & Ors)** (Annexure-P/8) have to



go.

31. The Hon'ble Apex Court in the case of **Union of India and others vs. Bakshi Ram** reported in **AIR 1990 SC 987** in para-13 held as follows:

13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of S. 12 stands removed. That in effect is the scope and effect of S. 12 of the



Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of S. 12 and the order of the High Court cannot, therefore, be sustained.

32. It is true that so far as the 2019 election is concerned, pursuant to the fresh development which has come vide memo 2988 dated 27.07.2024 passed by the respondent District Cooperative Officer, East Champaran, Motihari by which the PACS has been superseded, the case has now got only academic interest. However, an order in this case will decide the fate of the petitioner in the future election.

33. The stand of the State has already been recorded and they have justified the decision. The respondent no.9 though have filed the counter affidavit concedes to the fact



that in view of section 12 of the 1958 Act as also the order of Hon'ble Apex Court, a person who has been given the benefit of section 3 or 4 of the said Act, the disqualification will not bar him/her from contesting the election.

34. Section 12 of 'the 1958 Act' has been incorporated and is very clear. Anyone who has been found guilty of an offence and has been dealt with under provision of sections 3 or 4 of 'the said Act' shall not suffer any disqualification, if any, attaching to a conviction of offence under the said section.

35. Further, the Hon'ble Apex Court which dealt with the matter in the **Union of India** and others (supra) has clearly held that section 12 of 'the 1958 Act' override any other law which records disqualification for being appointed in any office or seeking an election to any authority or body in view of his conviction.

36. This Court thus holds that the petitioner having been given the benefit of Section 3 of 'the 1958 Act', in view of Section 12 of the same Act, there is/was no bar upon him to contest the election of 'the PACS' as he was not disqualified from filing the nomination.

37. Taking into account the aforesaid facts as also



the provision of ‘the 1958 Act’ which gets support from the Hon’ble Apex Court order in **Union of India and others** (supra) as recorded above, the order dated 31.08.2022/13.10.2022 passed by learned Joint Registrar, Cooperative Societies, Bihar, Patna (Annexure-P/7) as also the Review order dated 31.10.2022 stand quashed. As ‘the PACS’ stands superseded, the petitioner cannot be reinstated to the post he was holding. However, in future there will be no bar for him to participate in any election by virtue of him being given the benefit under section 3 of ‘the Act’.

38. With the aforesaid observations, the writ petition is allowed. No cost.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	28.09.2024
Transmission Date	

