

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7155 of 2024

-
-
1. Krishna Murari Gupta son of late Kashi Nath Sah, resident of village- Jamalpur, P.S.- Nasriganj, District- Rohtas (Sasaram).
 2. Suryakeshwar Singh, son of Late Radha Singh, resident of village- Bagea, P.S.- Kachhwan, District- Rohtas (Sasaram).
 3. Murari Singh, son of late Late Radha Singh, resident of village- Kaithi, P.S.- Kachhawan, District- Rohtas (Sasaram).
 4. Bhulu Sah, Son of Late Makhu Sah resident of village- Kaithi, P.S.- Kachhawan, District- Rohtas (Sasaram).
 5. Ramchandra Sah, son of Late Pachkauri Sah, resident of Itimah, P.S.- Nasriganj, District- Rohtas (Sasaram).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Cooperative Department, Government of Bihar.
2. The Bihar State Election Authority, through its Secretary, 32, Harding Road, Patna.
3. The Registrar Cooperative Societies, Bihar, Patna.
4. The District Magistrate, Rohtas- cum-The District Election Officer (Cooperative Societies).
5. The Joint Registrar, Cooperative Societies, Patna Division, Patna.
6. The District Cooperative Officer, Rohtas- cum- the Deputy District Election Officer (Cooperative Societies).
7. The Block Development Officer, Nasriganj, Rohtas- cum- the Election Officer (Cooperative Societies).
8. The Cooperative Extension Officer, Nasriganj.
9. Pankaj Kumar, son of late Jokhan Singh, resident of village- Baradih, P.O.- Thakurari Parsiya, P.S.- Nasriganj, District- Rohtas (Sasaram).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Amit Srivastava, Sr. Advocate Mr. Rakesh Kr. Jha, Advocate Mr. Girish Pandey, Advocate
For the State	:	Mr. Md. Irshad A.C to S.C-1
For the Respondent No.9:		Mr. Rajendra Narayan, Sr. Advocate Mr. Ranjit Kumar, Advocate Mr. Gautam Kr. Yadav, Advocate Mr. Arvind Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER



3 30-07-2024 Heard Mr. Amit Srivastava, learned Senior Counsel for the petitioner and Mr. Rajendra Narayan, appearing for Respondent No.9 beside the learned A.C. to Standing Counsel-1, Md. Irshad.

2. The petitioners have prayed for grant of the following following reliefs:

(i) for issuance of an appropriate order/direction/ writ preferably in the nature of certiorari quashing order dated 25.01.2024/23.03.2024 issued vide Memo No. 337 dated 23.03.2024 passed in election Dispute No. 34/2023 by the Joint Registrar, Cooperative Society, Patna Division whereby the election of the Nasriganj Vyapar Mandal Cooperative Societies limited held on 29.12.2022 (wrongly mentioned as 19.12.2022) have been declared as ab-initio-void on the ground that owing to the referred infraction in the voters list, the election result was affected



apparently and thus, the election was vitiated;

(ii) any other relief/ reliefs for which, the petitioners are entitled to in the facts and circumstances of the case.

3. The case of the petitioners in narrow compass is/are as follows:

4. The Nasriganj VMS is a Cooperative Society registered in accordance with the provisions of the B.C.S. Act, 1935. In terms of section 14-A of the Bihar Cooperative Societies Act, 1935 (henceforth for short 'the 1935 Act') r/w Rule 21-Y of the Bihar Cooperative Societies Rules, 1959 (henceforth for 'the 1959 Rules') and its election is entrusted with the Bihar State Election Authority (henceforth for short 'the Authority') constituted under the Bihar State Election Authority, Act, 2008 (henceforth for short 'the 2008 Act') which is a complete code prescribing the provisions for preparation of the voters list, conduct of election, election petition and the grounds for declaring the election as void;

5. The case is that the terms of the erstwhile board of the Nasriganj VMS was to expire in the year 2022 and hence for constitution of the new board, 'the Authority',



(respondent No. 2) proceeded for the election. The completion of the first step of any election is the preparation of the voters list, which was issued vide its letter no. 1248 dated 12.07.2022;

6. Accordingly, the draft voters list prepared and submitted by the Society was published on 22.07.2022 inviting objections to be considered up to 02.08.2022. The voter list incorporates total 297 voters [in the manner 12 in part 1 and 285 in part-II] exactly the same on the basis of which the previous election of the year 2017 was conducted.

7. The further case is that Nasriganj VMS is an old Vyapar Mandal having individual members in part II. Further, in view of Rule 12- A of 'the 1959 Rules', the Vyapar Mandal which is a Central Cooperative Society, there cannot be any individual member except the existing individual members on the date of implementation of the said Rule. This is for the sake of proper identification, the former has been categorised as the old Vyapar Mandal and the latter as the new Vyapar Mandal;

8. Although the final voters list was published as per the scheduled programme (Annexure-P/1) but, later on, as permissible under the instruction of 'the Election Authority' to



make amendment till the date of nomination, on the basis of the objections so filed, certain amendments were made in the Voters list. Accordingly, the corrected final Voters list was published by the Election Officer on 14.08.2022. Thereafter, 'the Election Authority' vide notification no. 1462 dated 02.08.2022 published programme of election prescribing the date of nomination on 22-23.08.2022, the date of scrutiny 24-25.08.2022, withdrawal of the nomination on 27.08.2022 and the date of polling and counting on 03.09.2022;

9. It transpires that one Vinod Kumar Singh filed an objection petition before 'the Election Authority' against the amendment made in the Voters list. It is relevant to mention herein that by way of amendment dated 14.08.2022, the Election Officer added one name in the Voters list at serial no. 286 and made certain correction in seventeen existing voters.

10. The Election Authority, vide notification no. 1611 dated 30.08.2022 while staying the ongoing process of the election in Nasriganj VMS, issued letter no. 1609 dated 30.08.2022 directed the District Cooperative Officer cum-the Nodal Officer (Cooperative Societies) to conduct an enquiry in connection with the objection so raised by Vinod



Kumar Singh and submit report.

11. The respondent no.6 submitted its report (as contained in Annexure-2). Accordingly, 'the Election Authority' issued letter No. 217 dated 29.11.2022 for publishing of the amended voters list prepared on the basis of the aforesaid report. The corrected Voters list thereafter was published and accordingly, 'the Election Authority' vide notification no. 2209 dated 05.12.2022 issued a fresh programme for the election to be held on 29.12.2022.

12. The election took place on 29.12.2022 in which petitioner no. 1 was declared elected for the post of the Chairman while eight persons including the petitioner nos. 2 to 5 were elected as the Members of the Board.

13. The petitioner no. 4 as also Krishan Bihari Singh, Kim Khan, Pradeep Kumar and Gulabi Devi also won the election uncontested. Further, it is relevant to mention that for the post of the Chairman, besides the petitioner no. 1 and the Election petitioner (respondent no. 9), there were two more candidates and all four got valid votes in the manner 43,36,28 and 14 respectively out of total 122 votes which included one vote that was declared invalid.

14. However, after being defeated, the respondent



no. 9 filed Election Petition bearing no. 34/2023 before the Registrar, Cooperative Societies, Bihar which was transferred in terms of section 48(2) (b) of 'the 1935 Act' to the Joint Registrar, Cooperative Societies, Patna Division for hearing and disposal.

15. The case of the petitioner is that the Election petition reveals that the respondent no. 9 chose to challenge only the election of writ petitioner no. 1 to the post of the Chairman for declaring the said election as void and conduct a fresh election and/or to declare him to the post of the Chairman. The petition was filed taking sole ground pointing out certain infirmities in the Voters list with the allegation that out of 286 total votes, ten were invalid and as it was polled in favour of the writ petitioner no. 1, he was defeated by margin of four votes;

16. After hearing the parties, the Joint Registrar passed order as contained in memo no. 337 dated 23.03.2024 declaring the election dated 19.12.2022 (actually it was 29.12.2023) of Nasriganj VMS as void ab-initio on the ground that the voters list was defective which affected the result of the election.

17. It transpires that after the order was reserved



on 25.01.2024, the Joint Registrar summoned the marked Voters list used during the polling to ascertain the fact as to whether polling took place against the names which have been referred as the invalid Voters. It further transpires that the marked voters list was submitted on 20.02.2024 in which he found that polling took place against the names of Gulam Mustafa and Ramchandra Sah although they were dead and polling took place against serial no. 242 who as per the report of the Nodal Officer, was a resident of the Uttar Pradesh.

18. The contention is that the learned Joint Registrar missed to notice the same report of the Nodal Officer with regard to Ram Chandra Sah validating entry of his name as genuine and correct. He further missed to notice that in the election petition itself, Gulam Mustafa was not shown dead. He further missed to notice that membership of Bhagwan Singh at Sl. No.242 was not declared invalid in terms of section 48 of 'the 435' till the election and thus he had right to vote. He also missed to notice that aforesaid three allegations even if correct, had no impact upon the result of election considering the margin of win. Further, the Joint Registrar wrongly presumed that all the said votes polled went in favour of the winner.



19. It is submitted that the import of the impugned order declaring election as a whole void ab-initio affected the election of the other returned candidates also including the petitioner nos 2 to 4 as well, although the same were not under challenge in the election petition.

20. Learned Senior Counsel for the petitioner has taken this court to the order passed by the Respondent No.5 to show that after hearing the parties on 25.01.2024, the order was reserved in the **Election Petition No. 34 of 2023 (Pankaj Kumar Vs District Electoral Officer from District Magistrate Rohtas, Sasaram and others)**. He thereafter sought a report from the Block Development Officer-cum-Electoral Officer vide memo no. 123 dated 03.02.2024 who vide letter no 134 dated 20.02.2024 provided the reply.

21. According to it:

(i) Gulam Mustaffa, son of Md. Musaf despite being dead was one of member who cast vote;

(ii) Ramchandra Sah, though dead, the name of the father was changed and he also participated in the election and voted;

(iii) the third name is not there but referred as serial no. 242 and informed that he resides in Uttar Pradesh for



decades.

22. Learned Senior Counsel submits that this alongwith the report of the respondent no.6 led him to pass an order dated 22.03.2024 (Annexure-P/6) by which the election of the petitioner was declared ab initio void communicated to him vide memo no.337 dated 23.03.2024.

23. He reiterates that a perusal of order would show that once the order was reserved on 25.01.2024, report was sought for, the same was received and incorporated in the order. In that background, the least that was expected from the said respondent was to provide copies to both the parties i.e. the election petitioner (the respondent no.9 herein) as also the present petitioner in this case and further should have sought their respective comments. Only thereafter he should have proceeded with the passing of the order incorporating the comments. In absence of that, the entire order is fit to be set aside.

24. It is his submission that even factually the order is flawed inasmuch as, the election petitioner (Respondent No-9) in the petition itself stated that Gulam Mustaffa is alive **(para-12 of the election petition)** but the order shows him dead. Further, in the reply of the respondent no.6, he found



the incorporation of name of **Ram Chandra Sah, son of Pachkauri Sah** to be correct, the order states otherwise.

25. Learned Senior Counsel has taken this Court to the different orders of Patna High Court specially the order passed in the case of **Sushila Prasad vs. State of Bihar** by the learned **Single Judge** reported in **2015(4) PLJR 881** with specific reference to paragraph 14 which read as follows:

14. There is absolute lack of pleadings to support that the voters who had been illegally included in the list had contributed to the success of the returned candidate and which had materially affected the election nor is there any thing on record to show whether any such prayer had been made by the petitioner in conformity with the statutory provisions. In fact even in absence of such prayer the petitioner simply proceeded to seek a declaration



*that the entire election was void on
such infirmity.*

26. He also took this Court to another order of the learned Single Judge in the case of **Nasinmuddin vs the State of Bihar and others** reported in **2006 (1) PLJR 184** with specific reference to paragraph 1 which read as follows:

1. A voters list was prepared and on the basis of that voters list, the private respondent tried his luck at the election and lost. Subsequently he turned around and in the election petition contended that the voters list was wrong and the learned Munsif has accepted such contention and rejected the votes obtained by the petitioner, who was declared elected. It is surprising that the Munsif even did not try to ascertain who were those persons whose names were wrongly entered in the voters list. It is even more surprising that before curtailing the voters from the list,



the Munsif did not try to ascertain who were those and accordingly rejected the genuine votes. The Munsif, it seems by reading of the judgment, wanted to declare the private respondent as winner and has passed a judgment which cannot stand the test of law even for one second. It did not dawn participated in the election on the basis of the voters list and has tried his luck on the basis thereof, after loosing cannot challenge the voters list.

27. Learned Senior Counsel submits that though even factually the order is flawed, he rests his case on the absence of the enquiry report of the BDO-cum-Electoral Officer which formed one of the basis for passing of the order and as such the same is fit to be set aside.

28. Learned Senior Counsel Mr. Rajendra Narayan, represents the respondent No. 9 and a counter-affidavit is on record. Paragraphs **7 to 14** and **17** read as follows:



7.that it is stated that further the date of Election of Chairman of Nasariganj Beyapar Mandal Sahayo Sammittee limited was announced to be held on 29.12.2022 and for that date of Publication the draft Voter list, the date of Publication of final voter list and the date of filing of Nomination paper etc. was announced;

8. that it is stated that accordingly the publication draft voter list of the Member of the Voters of Nasariganj Beyapar Mandal were made in which several persons who were even died and several persons who were even not living in their villages and Several persons who had already left the village and Several wrong names with their wrong father name were printed in



voter list and for that several Contesting Candidates and one Sri Binod Kumar Singh S/o- Rajendra Pd. Singh of Village-Itamaha, P.S.- Nasariganj, District - Rohtas made an application before the appropriate authority for inspection and correction in the voter list;

9. that it is stated that accordingly the inspection and scrutiny of said drafts voter list was made by the Senior Officer of the Block moving on spot inquiry and accordingly the the Senior officer of the Block vide letter no. 3201 dated 20.11.2022 submitted an inspection report in which in Course of the spot inspection the name of 16 persons were found entered in- correct in voter list;

10. that further vide letter no. 2594



dated 20.11.2022, the Deputy Development Commissioner Nodal Officer (Rohtas) submitted the Copy of said Cum-invalid/defective draft voter list before the Secretary/Bihar State Election Officer, Patna;

11. that further vide letter no. 2172 dated 29-11-2022 (Annexure-2) the Secretary Bihar State Election Officer, Patna sent the said invalid / defective draft voter list of Nasariganj Beyapar Mandal Sahoyog Sammittee before District Co-operative Officer Rohtas with direction to prepare a new Correct voter list and further a directed him to send the fresh and Corrected voter list before the B.D.O. -Cum - Election Officer Nasariganj Block up to 20-12-2022 who after receiving of the said new and



corrected fresh Voter list, published the same on 3.12.2022, at all specified places and give acknowledge about the same up to the 4.12.2022 before the Secretary Bihar State Election Authority;

12. that further Final voter list was prepared and sent by the District Co- Operative Officer, Rohtas and the same was further sent before the B.D.O. -Cum- Election Officer Nasariganj for its final Publication and accordingly final publication of Voter list was made;

13. that from the said inspection report dated 29.11.2022 apparent that in serial no. 5 one voter namely Ram Chandra Sah S/o- Sitaram Sah of village- Itamaha has already died but his name was at serial no. 89 in the voter list of 2012 and 2017 and now there is no



persons of the name of Ram Chandra Sah is alive in Village-Itamaha, however in Corrected and final voter list name of said Ram Chandra Sah was left remain at same serial no. 89 Changing the name his father's name as Pachakauri Sah in place of Sita Ram Sah and on the date of vote by him personating him his vote has been illegally casted in the name of said died Ram Chandra Sah which is Completely against the process of election and all such type of irregularity has been committed only with intention to elect the Petitioner no. 1 as the Chairman of Beyapar Mandal, Nasariganj;

14. that in similar manner at Serial No. 9 of the Inspection report a clear finding has already came in Inspection that Bhagaban Singh



*S/o- Jagnarayan Singh of Village
Parasiya Thakuraie has already
left his village and became a
permanent inhabitant of Prayagraj
(U.P.) for 30 Years continuously.
However his name remained
printed at Serial no. 242 in final
Voter list;*

*17.that further one Gulam Mustaffa
S/o- Md. Musaf of Village- Itamaha
is still alive in his village- Itamaha.
However in final voter list he has
been shown dead.*

29. Learned Senior Counsel submits that there are others name also who were either not present/shifted but their names continued in the electoral list and which forms basis for the election in which the present petitioners got elected. Bringing on record such anomalies, the respondent no. 9 filed the petition in which a detailed order has been passed by the Respondent No.5 which need no interference.

30. Learned Senior Counsel has taken this Court to the Hon'ble Apex Court judgment in the case of **Shri Sant**



**Sadguru Janardan Swami and Anr. vs. State of
Maharashtra & Ors.** reported in **2001(8) SCC 509** with
reference to paragraphs 8 and 9 which read as follows:

8. It was then urged that the Tribunal constituted under the Act has power to go behind the preparation of the electoral roll and, therefore, the writ petition is maintainable. Learned counsel also strongly relied upon the decisions in the case of Bar Council of India v. Surjeet Singh and Ramchandra Ganpat Shinde v. State of Maharashtra. Learned counsel also referred to Section 100 of the Representation of the People Act and a decision in the case of Shreewant Kumar Choudhary v. Baidyanath Panjiar. In sum and substance, the argument is that since the breach of rule in preparation of the



electoral roll cannot be questioned in an election petition before the Election Tribunal, therefore, the writ petition challenging the preparation of the electoral roll could not have been dismissed on the ground that the appellants had an alternative remedy of filing an election petition. In this regard, it is relevant to notice Rule 81 of the Rules which provides for grounds for declaring election to be void.

9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that the preparation of



electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal.

31. He submits that when the electoral list was full of anomalies, the Respondent no.9 had all the rights to challenge the same in which an order has been passed. He however, concedes that once the order was reserved on 25.01.2024 and thereafter a report was sought for and reply thereof finds place in the order, the authority should have supplied copies of the report to both the sides asking for their respective comments before deciding the matter.

32. This Court would like to put on record its word of appreciation for the learned Senior Counsel for respondent no.9 for having accepted the fact when the order was reserved and the report was sought and received, the least that was expected was to get the comments from both the sides before passing the order in question.



33. Having heard the respective parties and on perusing the records, in view of the order that this Court intends to pass, for the present, it refrains from commenting on the cases cited by both the parties.

34. The admitted fact is that the **Election Dispute Case No. 34 of 2023** was filed by the Respondent No 9. The petitioner appeared, both contested the matter and thereafter on 25.1.2024, the respondent No.5 chose to reserve the order.

35. Instead of passing the order on the basis of materials on record as also the arguments of the parties, he sought a report behind the back of the election petitioner and as petitioner herein. It is again an admitted fact that the report was so received and was incorporated in the order.

36. In that background, this Court fully agrees with the submissions put forward by learned Senior Counsels that the least that was expected from the concerned respondent was to serve the copy of the report so received upon the election petitioner as also the present petitioner asking for their respective response. Once the responses received, should have gone through it, incorporated it in the final order. In absence of that, the entire order stands vitiated and needs to be interfered with.



37. In that background, the Election Dispute Case No. 34 of 2023 passed by the respondent no.5, the Joint Registrar, Cooperative Societies, Patna Division, Patna is set aside.

38. The matter is remitted back to the concerned Respondent No.5, the Joint Registrar, Cooperative Societies, Patna Division, Patna to re-hear the same and pass an appropriate order in accordance with law.

39. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

Ravi/-

U			
---	--	--	--

