
(2016) 01 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13060 of 2015

Kaushal Kishore and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Bihar State Election Authority Act, 2008 — Section 12 (1) (d) (iv), Section 12(1) (d) (iv), Section 12(1)(d)(iv)

Citation : (2016) 01 PAT CK 0071

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Rakesh Kumar Jha, for the Appellant; S.A. Alam, SC-3, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—1. Heard Mr. Rakesh Kumar Jha, learned counsel appearing for the petitioners, learned counsel for the State and Mr. Shashi Kant Kumar, learned counsel appearing for the private respondent No. 7 who was the election petitioner before the prescribed authority. Though served, the other respondents have not chosen to appear.

2. With the consent of the parties this writ petition has been heard and is being finally disposed of at the stage of admission itself.

3. Whereas the petitioner No. 1 is the Chairman of Keshopharka Primary Agriculture Credit Cooperative Society operating under Sono Block in the District of Jamui, the petitioner No. 2 is a Member of the Managing Committee so elected. The petitioners along with the respondent 3rd set have been unseated from their respective post by virtue of the order dated 13.6.2015/29.6.2015 passed by the Joint Registrar, Cooperative Societies, Bhagalpur Division, Bhagalpur in Election Dispute No. 15 of 2015. The prescribed authority by the impugned order has declared the entire election to constitute the managing committee of the society as void on grounds of corrupt practices as well as on

grounds of infirmity in the voter list.

4. The facts of the case briefly stated is that the election petitioner i.e. the respondent No. 7 herein along with petitioner No. 1 and some others contested for the post of Chairman of the society in question in which the petitioner No. 1 returned as the Chairman and being aggrieved the respondent No. 7 filed the election dispute in question which has been allowed by the impugned order declaring the entire election to constitute the managing committee of the society as void and being aggrieved the Chairman and one of the members of the Managing Committee are before this Court.

5. Mr. Jha, learned counsel appearing for the petitioners has questioned the impugned order on the following grounds:

"(a) The respondent No. 7 himself being a candidate to the post of Chairman and having taken a calculated risk of contesting the election, he cannot turn around to question the election on grounds of infirmity in the voter list;

(b) The respondent No. 7, never raised any objection on the voter-list and thus is stopped from raising any such grounds to question the election; and

(c) An election cannot be upset simply on grounds of infirmity in the voter-list until such time that it is demonstrated by leading evidence that the alleged ineligible voters have contributed to the success of the returned candidate in the light of the statutory provisions underlying section 12(1)(d)(iv) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as "the Election Authority Act") and "the Rules" framed thereunder.

6. While the learned State Counsel has simply supported the impugned order, the argument on behalf of the respondent No. 7 is led by Mr. Shashi Kant Kumar to support the impugned order. He submits that the Block Development Officer is a party to the illegal grant of membership to 281 persons without following the prescribed procedure. In support of his submission Mr. Shashi Kant Kumar has referred to Annexure-R/10 to the counter affidavit which is a letter addressed to the Returning Officer in respect of membership granted to 281 members of the society as well as the representations enclosed therewith questioning grant of membership to 281 persons without following the procedure. According to Mr. Shashi Kant Kumar, since the mandatory procedure provided under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act") and "the Rules" framed thereunder as regarding grant of membership to these 281 persons has not been followed hence their entry to the membership of the society as well as their inclusion in the voter-list, was not correct and such illegality is fully covered under the provisions of section 12 (1) (d) (iv) of "the Election Authority Act" and "the Rules" framed thereunder. Mr. Shashi Kant Kumar in support of his submission has relied upon a judgment of the Supreme Court reported in , (2001)8 SCC 509 (Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dugdha Utpadak Sanstha v. State of Maharashtra)."

7. I have heard learned counsel for the parties and I have perused the records.

8. The election petition has been placed on record by the petitioner vide Annexure-1 to the writ petition. The foundation of the election dispute lies on the allegation of election petitioner who is respondent No. 7 herein regarding illegal grant of membership to 281 persons. The election petitioner thus prays for deletion of names of these 281 persons from the voter-list and for holding fresh election. Apparently a membership issue has been translated into an election dispute. Whether or not the prescribed procedure was followed in the matter of grant of membership to those 281 persons, may be a subject-matter of a membership dispute to be raised before the statutory authorities under section 48 of "the Act" but until such time that an opinion is expressed by the statutory authority as regarding grant of membership to these 281 persons it cannot be a subject-matter of an election dispute for in my opinion, until such time that there is an adjudication on the membership of 281 persons their entry into voter list would suffer from no infirmity. There is no discussion in the election petition as to whether the respondent No. 7 took any steps to question the membership of these 281 persons before the proper forum. Certainly this issue could not have been raised before the Prescribed Authority by way of election dispute. I would go a step further to hold that once a membership is granted to any person which may be suffering from procedural infraction but that ipso facto cannot be a ground to snatch the membership from him until such time that the charge maker is able to establish that the member concerned suffers from ineligibility to enter into the membership. In so far as the present case is concerned there is no dispute that these 281 persons had attained membership of the society and whose membership is yet to be set aside by a competent forum.

9. In my opinion, in the circumstances discussed, the election dispute, on this count, was not maintainable. The election dispute was also not maintainable for the election petitioner cannot question the election of the managing committee as a whole in a sweeping manner simply on grounds that 281 persons had incorrectly been granted membership of the society. The provisions of section 12(1) (d) (iv) of "the Election Authority Act" is self eloquent and until such time that the election petitioner is able to demonstrate by leading substantive piece of evidence that these ineligible persons have contributed to the success of the returned candidate, a sweeping statement cannot constitute an election dispute nor a charge simplicitor of infracted voter list shall be sufficient to interfere with the election of the returned candidate(s). Reference in this regard is made to the judgment reported in , 2015(4) PLJR 881 (Sushila Prasad v. State of Bihar). Neither on maintainability nor on merits the election dispute was capable of being entertained and has been wrongly entertained by the prescribed authority who has perpetuated the illegality by upsetting the election.

10. For the reasons aforementioned the impugned order dated 13.6.2015/29.6.2015 passed by the Joint Registrar, Cooperative Societies, Bhagalpur Division, Bhagalpur in Election Dispute No. 15 of 2015 cannot be

upheld and is accordingly set aside.

11. The writ petition is allowed. The petitioners along with the respondent 3rd set stand restored to their respective post.