

(2023) 04 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6008 Of 2016

Krishna Ram

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Bihar Cooperative Society Rules, 1959 — Rule 21A
Bihar State Election Authority Rules, 2008 — Rule 11
Bihar State Election Authority Act, 2008 — Section 3, 4, 10, 13(2)
Bihar Co-operative Society Act, 1935 — Section 14A, 14A(1), 48, 48(6)

Citation : (2023) 04 PAT CK 0046

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Rakesh Kumar Jha, Ram Vinay Pd. Singh, Manish Dhari Singh

Judgement

Heard learned counsel for the petitioners and learned counsel for the State along with learned counsel for the State Election Authority, Mr. Mukesh Kumar Thakur.

The learned counsel for the petitioners submits that an Election Petition (Annexure-1 to the writ application) bearing No. 10 of 2009 was filed before the Respondent No. 3 by the Respondent Nos. 5 and 6 challenging the election dated 13.06.2009 held for constituting the Managing Committee of Arpana Sahkari Gram Nirman Samiti Ltd., (hereinafter referred to as the 'Society') in the Election Petition, it was alleged that the election had taken place based on fake and forged voter list as 37 persons named in the voter list from Serial No. 152 to 188 were not voters of the Society.

It is next submitted that the membership of the petitioners and 34 others was questioned on the ground that the Managing Committee of the Society had not approved their names. It is further submitted that O.P. No. 3 of the Election Petition, a returned candidate for the post of Secretary had replied the contents of the Election Petition, stating that there were 151 members of the Society as on 31.03.2004 and 37 members were enrolled in between 2005 to 2006, of

these 37 persons, 12 are having plots/flats in the Society which is not disputed or opposed by any person, as such, there was no controversy that O.P. No. 3, who had issued receipt of membership to the petitioners and 34 others, was not the Secretary of the Society on the basis of elections held on 22.12.2004.

The learned counsel for the petitioners, at this stage, submits that inadvertently at Para-5 instead of 22.12.2004 it has been typed as 22.12.2014, the submission is noted.

It is next submitted that since O.P. No. 3 (Anil Kumar) of the Election Petition died, hence not impleaded as party respondent in the present case.

The learned counsel for the petitioners next submits that the Joint Registrar vide his order dated 19.01.2010 (Annexure-3 to the writ application) in Election Dispute Case No. 10 of 2009, set aside the entire election of the Managing Committee and held that 37 persons including the petitioners were not valid members of the Society. It is next submitted that the petitioners against the part of the order dated 19.01.2010 in Election Dispute Case No. 10 of 2009 preferred appeal before the Registrar, Co-operative Society. The petitioners were aggrieved by that part of the order which affected their membership in the Society. One of the grounds raised in the appeal was that the order dated 19.01.2010 was passed without giving the petitioners and similarly situated persons like them any opportunity of hearing, apart from other grounds.

The Registrar, Co-operative Society vide order dated 30.01.2014/17.02.2014 (Annexure-4 to the writ application) rejected the Appeal No. 82 of 2010 holding it to be not maintainable on the ground that in terms of the order passed in C.W.J.C. No. 22343 of 2011 which was affirmed in L.P.A. No. 339 of 2013, the Registrar, Co-operative Society had no jurisdiction to entertain appeal against the order passed by the Joint Registrar, Co-operative Society.

The learned counsel for the petitioners next submits that the order dated 13.08.2012 in C.W.J.C. No. 22343 of 2011 affirmed in L.P.A. No. 250 of 2013 and L.P.A. No. 339 of 2013 (Annexure-5 to the writ application) is in accordance with Section 10 and 13(2) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008') read with Section 14A and Section 48 of the Bihar Co-operative Society Act, 1935.

The learned counsel for the petitioners further submits that the Act of 2008 came in existence on 23.04.2008. Under Section 3 of 2008 Act, Election Authority was constituted and under Section 4 of the 2008 Act, the Authority had jurisdiction to conduct election only of such bodies as Co-operative Society, Siksha Samiti or any other institution, organization and establishment entrusted to it by the State Government.

At this stage, the learned counsel for the petitioners further points out that in terms of Section 4 of the Act of 2008, the Society of the petitioners was not eligible for having their election conducted under the Act of 2008. It is next

submitted that by Bihar Act 18 of 2008, published on 30.04.2008 Section 14A of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the '1935 Act') published on 30.04.2008, Section 14A was inserted in the Act of 1935, which was with regard to election of the Managing Committee of certain registered societies. The learned counsel submits that even after insertion of Section 14A of the Act of 1935 also did not make the Society of the petitioners eligible for getting their election conducted under the Act of 2008.

The learned counsel further submits that in terms of Section 14A of the 1935 Act, the State Government issued Notification Dated 01.05.2008 (Annexure-6 to the writ application) whereby 7 types of Co-operative Societies were brought within the purview of State Election Authority Act, 2008.

The learned counsel for the petitioners again by way of caution submits that the Society of the petitioners was not incorporated in the Notification Dated 01.05.2008 (Annexure-6 to the writ application). It is next submitted that thereafter the State Government issued another Notification under Section 14A (1) of the 1935 Act, whereby Bihar State Land Development Bank and Bihar State Housing Co-operative Federations were excluded from the purview of the Act of 2008. It is next submitted that Section 14A(1) of the 1935 Act, in so far as it empowered the Government to bring the election of the Managing Committee of a class or classes of Registered Society within the purview of Act of 2008 was declared ultra vires vide order dated 13.09.2011 in C.W.J.C. No. 7581 of 2008 (Ramzan Ansari Vs. State of Bihar & Ors.)

The learned counsel for the petitioners submits that since Section 14A(1) of the 1935 Act was held to be ultra vires by this Court, as such the natural corollary and the fall out of the said order was also of setting aside the Notification Dated 01.05.2008. It is next submitted that thereafter the Bihar Act 03 of 2012 published on 10.02.2012 amended Section 14A and as per amended provisions contained in Section 14A(1) all Co-operative Societies registered under the 1935 Act were brought within the purview of Act of 2008.

The learned counsel for the petitioners, thus, submits that from the facts recorded hereinabove, it is clear that till 10.02.2012, the Society of the petitioners was not eligible for getting their election conducted under the Act of 2008, it was only after 10.02.2012 that the petitioners' Society and similarly situated Society became eligible for getting their election of the Managing Committee conducted under the Act of 2008.

The learned counsel for the petitioners further submits that in view of the facts stated hereinabove, the Society under reference which is a Housing Co-operative Society on the date of election i.e. 13.06.2009 was not within the purview of State Election Authority Act, 2008. The election was conducted on 13.06.2009 in terms of the Rule 21A of the Bihar Co-operative Society Rules, 1959 (hereinafter referred to as the 'Rules of 1959') by the conducting officer i.e. the Assistant Registrar, Co-operative Society, Patna Anchal.

The learned counsel for the petitioners, thus, submits that the Election Dispute Case No. 10 of 2009, as such was not an election dispute in terms of Section 10 of the Act of 2008 and the Joint Registrar, Co-operative Society (Respondent No. 3) thus was not the Prescribed Authority in terms of Section 10, 11 (B) of the Act of 2008 read with Rule 11 of the Bihar State Election Authority Rules, 2008, thus Section 13(2) of the Act of 2008 was not applicable to the election under reference.

The learned counsel for the petitioners vehemently submits that membership of a person in any Co-operative Society is in exclusive domain of the Registrar, Co-operative Society, further the Appeal No. 82 of 2010 was not an appeal covering the issue of election, since only part of the order dated 19.01.2010 by which membership of the petitioners and 34 others was declared invalid was challenged under Section 48(6) of the Act of 1935. It is next submitted that accordingly, the petitioners filed an application dated 24.03.2014 for recalling the order dated 31.01.2014/17.02.2014 in Appeal No. 82 of 2010 before the Registrar, Co-operative Society, but the application was rejected vide order dated 05.01.2016 (Annexure-8 to the writ application) and 08.02.2016 (Annexure-8A to the writ application) contained in Memo No. 105/R2 Dated 11.02.2016, based on opinion of the learned Advocate General.

The learned counsel for the petitioners thus submits that the election petitioners who had filed Election Dispute Case No. 10 of 2009 had moved before a forum who had absolutely no jurisdiction to adjudicate the dispute. It is next submitted that had the election taken place under the Act of 2008, then definitely the Joint Registrar, Co-operative Society being the Prescribed Authority would have adjudicated the dispute. It is next submitted that what is not in dispute is that the Society of the petitioners till 10.02.2012 had not come within the purview of the Act of 2008 and since the Society of the petitioners was not within the purview of the Act of 2008, as such placing reliance on the order dated 13.08.2012 in C.W.J.C. No. 22343 of 2011 and order dated 08.04.2013 in L.P.A. No. 250 of 2013 and L.P.A. No. 339 of 2013 was completely misplaced by the Registrar, Co-operative Society, while holding the appeal to be not maintainable.

The learned counsel for the petitioners next submits that it appears that the Registrar, Co-operative Society got swayed by the opinion furnished by the learned Advocate General, it is next submitted that even the opinion so furnished by the learned Advocate General was not binding on the Registrar, Co-operative Society rather the Registrar, Co-operative Society ought to have applied his independent mind, as the Registrar, Co-operative Society was completely aware that the Society of the petitioners prior to 10.02.2012 was not within the purview of the Act of 2008 and the elections were held on 13.06.2009 which was not in dispute, as such, there was absolutely no applicability of the Act of 2008 in the dispute which concerns the present case.

The learned counsel for the State Election Authority, Mr. Mukesh Kumar Thakur, concurs with the submission of the learned counsel for the petitioners to the

extent that the Society in question was not within the purview of State Election Authority till 10.02.2012.

The learned counsel for the petitioners, at this stage, submits that though the petitioners have not challenged the order dated 19.01.2010 passed by the Joint Registrar, Co-operative Society in Election Dispute Case No. 10 of 2009 in its entirety, but then what emerges from the facts and law involved in the present case is that the election of the Society which was held on 13.06.2009 was not conducted under the Act of 2008. It is next submitted that though the validity of the membership of the petitioners was also adjudicated by the Joint Registrar, Co-operative Society which grieved the petitioners, but then the said adjudication was also completely without jurisdiction for the reason that the adjudication stemmed from an election dispute.

The learned counsel for the petitioners further submits that from perusal of the election petition, it would manifest that the election petitioners never challenged the initial membership of the petitioners and 34 similarly situated persons, nor they objected when the voter list was prepared and published which amply demonstrates that the election petitioners were aware of the validity of the membership of the petitioners but it was only that when the election took place, they challenged the election on the ground that the voter list prepared was fake and forged, it appears to be an afterthought.

The learned counsel for the private respondent Nos. 5 and 6 vehemently rebuts the submission of the learned counsel for the petitioners but is not able to repel the submission of the learned counsel for the petitioners that the Society in question till 10.02.2012 was not under the purview of Act of 2008.

The learned counsel for the petitioners while replying the contentions of the learned counsel appearing for the private respondents submits that the order passed by the Joint Registrar, Co-operative Society deciding the election petition including the issue of membership of the petitioners was completely without jurisdiction as the election petitioner had moved before a forum which had absolutely no jurisdiction to adjudicate the issue in question as the elections were not conducted under the Act of 2008. It is thus submitted that the order passed by the Joint Registrar, Co-operative Society was coram non-judice and its affirmation in appeal by holding that appeal was not maintainable automatically becomes bad. It is next submitted that the recall petition filed by the petitioners was also rejected on a flimsy grounds that the opinion received by the learned Advocate General was also against the petitioners. It is next submitted that neither the Joint Registrar, Co-operative Society nor the Registrar, Co-operative Society were able to appreciate that it was only after 10.02.2012 that the Society in question came within the purview of the Act of 2008 and any election conducted prior to that period was conducted in terms of Rule 21A of the 1959 Rules as recorded hereinabove for which the forum of challenge and appeal were also different.

After hearing the learned counsel for the parties, the Court comes to a considered conclusion that the order passed by the Joint Registrar, Co-operative Society dated 19.01.2010 in Election Dispute Case No. 10 of 2009 to the extent it was challenged, the order dated 30.01.2014/17.02.2014 in Appeal No. 82 of 2010 passed by the Registrar, Co-operative Society affirming the order of the Joint Registrar, Co-operative Society dated 19.01.2010 and the order dated 05.01.2016/08.02.2016 passed by the Appellate Authority refusing to recall the earlier order dated 30.01.2014/17.02.2014 is bad and thus cannot be sustained and hence all the three orders as recorded hereinabove are quashed.

The matter is remanded back to the Registrar, Co-operative Society to proceed in accordance with law, since the dispute in the present writ application related only with regard to the part of the order dated 19.01.2010, as such, this Court also does not merit any opinion on the entire order dated 19.01.2010, the Registrar, Co-operative Society shall now only adjudicate with regard to the membership of the petitioners with respect to the Society in question in accordance with law.