

(2023) 09 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.12559 Of 2023

Lalan Kumar Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Co-operative Societies Act, 1935 — Section 48

Citation : (2023) 09 PAT CK 0002

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Nivedita Nirvikar, Ranjeet Kumar, Ayush Kumar, Shashi Priya,
Mahendra Prasad Verma, Mukesh Kumar Thakur

Judgement

1. Heard Ms. Nivedita Nirvikar, learned senior counsel for the petitioners duly assisted by Mr. Ranjeet Kumar, learned counsel and Mr. Mukesh Kumar Thakur, learned counsel for the State Election Authority. The State is represented by Mr. Mahendra Prasad Verma, learned AC to SC-20.

2. By invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners have filed the present writ application seeking following relief(s):-

“(i) For setting aside the order dated 17.08.2023 contained in Memo No. 1631 dated 17.08.2023 passed by Chief Election Officer, Bihar State Election Authority to the extent, the said authority has directed for holding of election on the basis of the voter list of the year 2017 granted liberty to the petitioners to seek remedy in terms of Section 48 of the Cooperative Society Act, before the competent authority to resolve the membership dispute.

(ii) For issuance of direction to the respondent Bihar State Election authority to not hold election of Phulwarisharif Vyapar Mandal, until the Membership Dispute Case No. 104 of 2023 filed by the petitioners before the Registrar Cooperative in

the light of aforementioned liberty is decided, as the petitioners soon after receipt of the aforementioned impugned order dated 17.08.2023 filed the Membership Dispute Case on 25.08.2023 itself without any delay.

(iii) For any other relief for which the petitioners may be deemed entitled too.”

3. Learned senior counsel for the petitioners contended that the petitioners and 78 similarly situated other persons were the bonafide Members of Phulwarishrif Vyapar Mandal since 1988. However, all on a sudden in the year 2017, their names have been illegally removed from the voter list. On being aggrieved, when the petitioners approached before the authorities concerned and filed their objection, their names have been included in the voter list of 2022. However, again without giving any notice or opportunity of hearing, their names have been removed from the voter list, pursuant to the order contained in Memo No.250 dated 31.01.2023. Despite objection being raised before all the higher authorities of Bihar State Election Authority, when no succor was made, the petitioners left with no option but to approach this Court i.e. C.W.J.C. No. 2083 of 2023. The learned Division Bench of this Court taking note of the submissions made on behalf of the parties, relegated the matter to the State Election Authority to take final decision with respect of genuineness of the claim of the petitioners and other similarly situated persons and further be pleased to extend the dates of election till completion of the enquiry and consequent decision.

4. Learned senior counsel further contended that in deference to the order of this Court, the petitioners approached before the State Election Authority, however, as under the statute, the State Election Authority is not the competent authority to decide the question of Membership with regard to inclusion or exclusion of their names from the voter list, finally, the State Election Authority came out with an order as contained in Memo No. 1631 dated 17.08.2023 holding that the issue with regard to the grievance of the petitioners cannot be entertained by the State Election Authority as the petitioners have other statutory remedy as provided under the Bihar Co-operative Societies Act, 1935, especially in terms of Section 48 of the said Act. The petitioners, thereafter, immediately preferred appeal before the Registrar Co-operative Societies being Membership Dispute No.104 of 2023 on 25.08.2023 itself. In the aforesaid premise, she vehemently contended that as the date of the Cooperative Election has been scheduled to be held on 4th of September, 2023, the petitioners have left with no option but to mention the matter for urgent hearing, thereby the matter has been placed before the Court out of turn hearing.

5. On the other hand, learned counsel for the State Election Authority submitted that the petitioners themselves responsible for their fault as they have approached before the authority, who was not even competent to decide the issue and for which the respondents cannot be blamed, as ignorance of law cannot be an excuse. He further submitted that now the date of the cooperative election has already been notified and any order extending it, would cause prejudice to all the members of the society. He also submitted that so far the

right to vote is concerned, it is not a constitutional right rather it is a statutory right provided under the Bihar Co-operative Societies Act, 1935.

6. Having heard the parties and considering the fact that pursuant to the order of this Court dated 10.02.2023 passed in C.W.J.C. No. 2083 of 2023, the petitioners had approached before the State Election Authority, that was not the competent authority and having conversant with the order of the State Election Authority, the petitioners immediately approached before the Registrar Cooperative Societies by filing Membership Dispute No. 104 of 2023, which is pending consideration.

7. In view thereof, this Court directs the respondent no.3, Registrar Cooperative Societies, Bihar, Patna, to take up the issue raised in Membership Dispute No. 104 of 2023 immediately and decide the issue, as early as possible, preferably before ensuing cooperative election scheduled to be held on 04.09.2023.

It is needless to observe that if the petitioners approach the respondent no.3, Registrar Cooperative Societies, Bihar, Patna, with the present order, he will take up the matter and act upon it forthwith and if their claims are found fit, he will pass an appropriate reasoned order in accordance with law.