

(2015) 10 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6078 of 2015

Meena Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 48(7)

Bihar State Election Authority Act, 2008 — Section 10, 12, 12(1)(d)(iv), 13, 13(2)

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 47

Citation : (2015) 10 PAT CK 0007

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Yogendra Mishra and Kaushalesh Choudhary, for the Appellant; Binay Kr. Pandey, AC to GA-3, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard Mr. Yogendra Mishra, learned counsel appearing on behalf of the petitioner, learned counsel for the State and Ms. Mahasweta Chatterjee, learned counsel appearing for the private respondent Nos. 7 and 8. Though notice was issued and served on the non-appearing respondent Nos. 9 to 21 but they have not chosen to appear and respond to the writ petition.

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

3. The petitioner is aggrieved by the order dated 6.2.2015/16.2.2015 passed by the Joint Registrar (Marketing) -cum- Additional Registrar, Cooperative Societies, Bihar, Patna in Review Case No. 03 of 2014, whereby the Joint Registrar while recalling his order dated 24.10.2014/13.11.2014 passed in Election Dispute Case No. 176 of 2012 has disposed of the election case. Meaning thereby the election to the Managing Committee has been restored.

4. Facts of the case briefly stated is that the election to the Managing Committee

of Raghunathpur Prakhand Matasyajivi Sahyog Samiti Limited was questioned by the writ petitioner in Election Dispute Case No. 176 of 2012, inter alia, on grounds of infracted voter-list and that the outsiders had voted in the election. According to the petitioner, Raghunathpur Matsyajivi Sahyog Samiti Ltd. was reconstituted in the light of the statutory provisions underlying section 11-B of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act") having its area of operation within the Raghunathpur Block. In the amalgamation process, two self-supporting societies registered under the Bihar Self Supporting Cooperative Societies Act, 1996, namely Raghunathpur Prakhand Adarsh Matasyajivi Swablambi Sahkari Samiti Ltd. Usari and Bishunpura Matasyajivi Swablambi Sahkari Samiti Ltd. got amalgamated along with Raghunathpur Prakhand Matasyajivi Sahyog Samiti Ltd. which was registered under "the Act" to form Raghunathpur Prakhand Matasyajivi Sahkari Sahyog Samiti Limited. According to the writ petitioner, despite the amalgamation to form new society whose area of operation was only within the Raghunathpur Block, the membership and voter-list consisted of members who were residents of Andar and Hasanpura Block have been included as members and who were also included in the voter-list and since these persons were permitted to participate in the election hence the entire election stood invalidated.

5. The private respondents appeared in the election dispute, filed show cause in which the argument was contested and it was stated that it is only the members of the operational area who have participated in the election and not any outsider. It was further the contention of the private respondents that no objection at the time of amalgamation was raised by the election petitioner as to the membership issue and hence it has attained finality. It is further their case that in the election one of the election petitioners has also participated and since the result has gone otherwise that the issue of membership is raised which is beyond the scope of the election dispute.

6. The election case was allowed in favour of the election petitioner and the election of Raghunathpur Matasyajivi Sahkari Sahyog Samiti Limited was set aside. The respondent No. 8 as a Secretary of the Society preferred a review application under section 48(7) of "the Act" giving rise to Review Case No. 03 of 2014 which was admitted by the Joint Registrar on 26.12.2014/30.12.2014 and the operation of the order passed in Election Dispute Case No. 176 of 2012 was stayed and the parties were directed to address on the review application. The review application has been allowed, inter alia, on grounds that no outsider had participated in the election and that the election petitioner having participated in the election could not question the same on the ground of infracted voter-list. The order passed in the election dispute having been recalled that one of the election petitioner, namely, Meena Devi is before this Court. The other election petitioner who is respondent No. 21 has not chosen to contest the review order.

7. Mr. Yogendra Mishra, learned counsel has appeared for the petitioner to question the review order on the following grounds:

(a) Section 10 read with section 13 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as "the Election Authority Act") confirms that since after enforcement of "the Election Authority Act" the election to any cooperative society is to be guided under the provisions of the said Act and the provisions of "the Cooperative Societies Act" would not be applicable nor the prescribed authority can take recourse to the provisions present therein for exercise of powers;

(b) With reference to section 17 of "the Election Authority Act" he submits that the said Act has an overriding effect over the provisions of "the Act"; and

(c) That under section 13(2) of "the Election Authority Act" the decision of the prescribed authority is final and thus the exercise of jurisdiction by the prescribed authority to review his order is an exercise without jurisdiction.

8. Mr. Yogendra Mishra has further referred to the stand taken by the respondent No. 9 before the Joint Registrar, Cooperative Societies to submit that he had agreed that even the outsiders had participated in the election. It is thus submitted that when it remains uncontested that the election was infracted then there was no reason for the Joint Registrar, Cooperative Societies to review the order.

9. Learned counsel has relied upon a judgment of the Supreme Court reported in Kamlesh Verma Vs. Mayawati and Others, to submit that even assuming that the prescribed authority could exercise powers vested under section 48(7) of "the Act" read with the provisions of Order 47, Rule 1 of the Code of Civil Procedure, yet the pre-requisites for exercise of such power are not present in the present case for neither there is any error apparent on the face of record nor there is discovery of any material which could not be available to the review petitioner upon exercise of due diligence. It is thus submitted by Mr. Mishra that neither there is any power vested in the prescribed authority under "the Election Authority Act" to exercise review jurisdiction nor there are materials present for such exercise.

10. Learned counsel has also relied upon a Full Bench judgment of this Court reported in Nand Kumar Thakur Vs. The State of Bihar, and with reference to paragraphs 58 to 63 of the judgment it is submitted that no ground for review arises in the present case. For the same proposition learned counsel has also relied upon a judgment of the Supreme Court reported in D.R. Somayajulu Vs. Attili Appala Swamy, .

11. Advancing his argument on merits learned counsel has relied upon a judgment of the Supreme Court reported in 1957 SC 304 (The Chief Commissioner of Ajmer vs. Radhey Shyam Dani) to submit that if the voter-list is not prepared in accordance with the statutory provisions then that is sufficient reason to render the election void.

12. While learned State Counsel has stood in support of the impugned orders,

the arguments of Mr. Mishra are contested by Ms. Chatterjee, learned counsel appearing for the respondent Nos. 7 and 8 to submit that besides the point that the order passed in election dispute is illegal and not sustainable it has also been passed behind the back of the respondent Nos. 7 and 8. It is contended that while these respondents did file their reply to the election dispute but then the matter get adjourned from one day to another and when it was finally adjudicated, there was no advance notice to the respondents. It is contended that even the order impugned passed in the election dispute manifests that it has been decided on the basis of the show cause without any opportunity of hearing and which can be verified from the records of the case.

13. According to Ms. Chatterjee, Hasanpur block was created as back as in 1998 and the merger took place more than a decade later in the year 2011 in respect of the Societies operating within the Raghunathpur Block. She submits that there was no objection raised by anyone to the reorganization or on the membership issue and in support she refers to paragraphs 9 and 10 of the writ petition. She further submits that no objection was again raised against the voter-list as required under rule 21-J of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as "the Rules") framed under "the Act". Referring to the objection so relied upon by counsel for the petitioner placed at Annexure-6/1 to submit that objections were raised, it is submitted that it is not in the nature of objection as mandated under the statutory procedures. Advancing the argument on merits learned counsel makes reference to a counter affidavit filed in CWJC No. 21638 of 2013 to submit that although the answering respondents did have information about the pendency of the writ petition but they had no information regarding the stand taken by the respondents before this Court. It is submitted that no sooner that these respondents gathered information about the stand taken by the Returning Officer before this Court in CWJC No. 21638 of 2013 that the review application was filed and which is the foundation for review. With reference to the counter affidavit it is argued that the Returning Officer has stated that the election was held in accordance with law and that no outsider was allowed to participate in the election. It is the argument of Ms. Chatterjee that even if for the sake of argument the contention of Mr. Mishra regarding restrictions on review would find favour and it is held that the exercise of review jurisdiction is without sanction of law and it is quashed, that would lead to revival of another illegal order in view of the stand by the Returning Officer, who is Block Development Officer, Raghunathpur in CWJC No. 21638 of 2013.

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

15. Section 14 of "the Act" was amended in 2008 to provide for regulation of election to the managing committee of the Cooperative society by the Bihar State Election Authority constituted under the Bihar State Election Authority Act, 2008. The amended section 14-A(6) provides that no election to any class or classes of registered societies shall be called in question except by way of an election petition and which shall be decided as a dispute under section 48 of this Act.

Rule 21-X of "the Rules" framed under "the Act" is in tune with such statutory provisions and rule 21-Y which was incorporated after the enforcement of "the Election Authority Act" vests jurisdiction in the State Election Authority to conduct the election and to do everything connected therewith. The issue raised by Mr. Mishra is whether "the Election Authority Act" impliedly repeals these statutory provisions in view of section 17 read with section 13(2) of "the Election Authority Act" which makes an order passed by the prescribed authority to be final.

16. The provisions of "the Election Authority Act" leaves no room for confusion that it was enacted to provide a statutory body and the mechanism for conduct of election of a cooperative society registered under "the Act" and the procedure to be followed for such purpose. In fact the overriding effect of "the Election Authority Act" in so far as it relates to conduct of election has nothing to do with the power invested in the prescribed authority to adjudicate on election disputes arising therefrom save and except that the order passed in such election dispute by the prescribed authority is held final. Meaning thereby no appeal lies against such order of the prescribed authority. In so far as the conduct of election, its adjudication and the finality attached to the opinion on such election dispute is concerned, there can be no two opinion that it is to be guided by the provisions of "the Election Authority Act".

17. The issue in hand is whether such finality being attached to the order of the prescribed authority under section 13(2) of "the Election Authority Act", there is any power invested in the prescribed authority to review his order under section 48(7) of "the Act" and whether section 13(2) of "the Election Authority Act" would act as a bar to any exercise of review powers. In my opinion the submission is not sustainable for two reasons. Firstly that in so far as the exercise of powers by a prescribed authority to adjudicate on an election dispute is concerned, it is to be guided under the provisions of section 14-A(6) of "the Act" which specifically provides that an election can only be called in question by way of an election petition and secondly that such dispute raised, is to be decided as a dispute under section 48 of "the Act". Section 48 of "the Act" outlines the procedure to resolve a dispute and is the only enabling provision empowering the prescribed authority to adjudicate on any dispute raised under section 48 of "the Act". Thus even if the decision of the prescribed authority attains finality under section 13(2) of "the Election Authority Act" there is no estoppel to the exercise of power of review which stands invested in the prescribed authority under section 48(7) of "the Act".

18. The legal position being self eloquent, the exercise of review jurisdiction by the prescribed authority does not suffer from any infirmity warranting interference on jurisdictional issue.

19. It is now to be seen whether there were material present for such exercise and whether the judgment so relied upon by Mr. Mishra would apply to the present case. The limited ground on which the review has been upheld is the

counter affidavit filed by the Returning Officer before this Court in CWJC No. 21638 of 2013 in which the Returning Officer ?cum- Block Development Officer, Raghunathpur has chosen to deny that there was any infirmity in the voter-list or that any outsider had voted. While it is the contention of Mr. Mishra that the filing of the writ petition was well within the knowledge of the respondent Nos. 7 and 8 and thus the stand taken by the official respondents in the writ petition cannot be a discovery of a new material but in my opinion this argument is difficult to uphold. Filing of a writ petition has nothing to do with the filing of an affidavit by a contesting party more particularly when the answering respondents herein were yet to be noticed. The records of CWJC No. 21638 of 2013 has been called upon by me and which reflects that the writ petition was disposed of on grounds of maintainability on the very first day it was taken up i.e. 17.9.2015 without issuing any notice to any party. It is a different matter that by the time said writ petition came up for consideration before this Court, a counter affidavit had already been filed by the Returning Officer ?cum- Block Development Officer, Raghunathpur and in which he has categorically stated in paragraphs 5 to 15 that there was no infirmity in the voter-list and that whatever objections had been received had been taken care of. In paragraph 15 of the counter affidavit it has been stated that no outsider was allowed to participate in the election and members of the other Block were duly segregated from the Raghunathpur Block and that only eligible members were allowed to vote. It is difficult to comprehend that the private respondents should not only have been possessed with the information regarding the writ petition which was disposed of on the very first day on grounds of maintainability without any notice to the private respondents herein but also of the stand taken by the official respondents therein at the time when the election dispute was initially taken up for consideration.

20. It is not in dispute that the only issue on which the election had been declared void is that the voter-list was infracted and that the outsiders had voted. The order passed in the election dispute impugned at Annexure-11 does not reflect whether notice was issued to the Returning Officer and whether his opinion was taken on the contest although he was the most relevant party to respond to the issue. In fact, the Block Development Officer has specifically stated that no notice was received by him in relation the election dispute in paragraph 13 of the counter affidavit filed in CWJC No. 21638 of 2013. The review order rests upon the statement made by the Returning Officer before this Court as well as on the fact that the election petitioner had participated in the election although according to Mr. Mishra only one of them i.e. respondent No. 21 had participated and not the present petitioner.

21. A copy of the election petition was produced by Mr. Mishra during the course of delivery of this judgment and which shows that it is on grounds that a number of outsiders had voted in the election that the election petitioner prayed to quash the election of the private respondents in its entirety and call for fresh election.

22. The two issues which falls for consideration before this Court is whether the

stand taken by the Returning Officer ?cum- Block Development Officer before this Court in CWJC No. 21638 of 2013 in which he has specifically stated that no outsider had participated in the election should have been possessed by the petitioner even though no notice was issued to any private respondents and whether had such information been presented before the prescribed authority at the stage of hearing of the Election Dispute Case No. 176 of 2012, the result would have been otherwise.

23. In my opinion it would be stretching the issue of information regarding filing of counter affidavit really beyond permissible limits to hold that the private respondents not only had the knowledge of the writ petition but also of the counter affidavit filed before this Court. In fact if the information was available with these respondents, there was no reason to withhold it. In fact had this affidavit been available before the prescribed authority at the time of adjudication of the election dispute being an issue of fact, that would have been the end of the contest for the election petitioners because the very foundation on which the election petition rested would stand removed.

24. In the aforesaid view of the matter the issue raised by the private respondents calling for review merited consideration since the pre-requisites mandated under section 48(7) of "the Act" read with Order 47 of the Code of Civil Procedure to invite review, stood satisfied.

25. The argument of Mr. Mishra that the complaint of infracted voter-list is also admitted by the answering respondents before the Registrar in my opinion would make no difference nor draw in favour of the election petitioners, considering the nature of challenge raised and in view of the statutory provisions underlying section 10 read with section 13 of "the Election Authority Act". A simple irregularity in the voter-list on its own is no cause for invalidating an election as has been held by the Supreme Court in the judgment rendered in the case of Kunwar Nripendra Bahadur Singh Vs. Jai Ram Verma and Others, and has been followed thereafter. In the present case the situation is even worse for the provision so relied upon by the petitioner to seek such invalidation is found in section 12(1)(d)(iv) of "the Election Authority Act" which mandates that if an election of a returned candidate has been materially effected by any non-compliance of this Act or any rules or orders made thereunder, it can be a ground to declare his election void. In so far as the case in hand is concerned, except that the election petitioners have contended that a number of outsiders have voted, there is no whisper in the election petition that those outsiders have contributed to the success of the returned candidate(s) and to what extent. Section 10 of "the Election Authority Act" vests jurisdiction in a person aggrieved to question an election to any office of a body by way of election petition. Meaning thereby an election to an office of a body can be questioned in the light of the circumstances provided under section 12 . In the case in hand, the election petitioners in a sweeping manner have questioned the entire election on grounds of infracted voter-list. In my considered opinion in view of the law laid

down by the Supreme Court in the case of Kunwar Nripendra Bahadur Singh (supra) as followed in the subsequent judgment of the Supreme Court reported in Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, and Laxmi Kant Bajpai Vs. Hazi Yaqoob and Others, an irregular voter list simplicitor cannot be a ground to invalidate an election unless the election petitioner is able to satisfy that those ineligible voters have contributed to the election of the returned candidate. The election petition is completely silent on this issue of fact and in fact there is no prayer in the election petition for any such inspection.

26. For the reasons so discussed hereinabove, whether on the exercise of review jurisdiction by the prescribed authority or on merits, in either of the situation the petitioner has no case for any indulgence.

27. The writ petition is dismissed.