
(2018) 02 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1100 Of 2018

Shashikant Mandal

APPELLANT

Vs

State Of Bihar Through Chief Secretary And Ors

RESPONDENT

Date of Decision : 28-02-2018

Acts Referred:

Bihar Co-Operative Societies Act, 1935 — Section 48
Dentists Act, 1948 — Section 3(a)

Citation : (2018) 2 PLJR 787

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Amresh Kumar Singh, Anil Kumar Choudhary, Arun Kumar Bhagat, M.K. Thakur

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner for a direction to the respondent authority for adding the name of 227 persons, who filled up forms for membership of Parbatta Block Fisheries Co-operative Society and further to allow them to participate in the election process.

2. At the outset, a preliminary objection has been raised by the learned counsel appearing for the Bihar State Election Authority. He submitted that the election of Parbatta Block Fisheries Co- operative Society has already been notified and it is scheduled to be held on 23rd March, 2018 and, in that view of the matter, the writ petition would not be maintainable. In support of his submission, he has placed reliance on the decisions of the Supreme Court in Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra [(2001) 8 SCC 509] and Shaji K. Joseph Vs. V. Vishwanath & Ors. [2016 (2) PLJR SC 330]. He has also submitted that so far as the issue of membership is concerned, the petitioner has an alternative remedy before the Registrar, Co-operative Society under Section 48 of the Bihar Co-operative Societies Act, 1935.

3. In reply to the objection raised by the learned counsel for the Bihar State

Election Authority, learned counsel for the petitioner submitted that by way of I.A. No. 1656 of 2018 filed in the present writ petition, the petitioner has prayed for stay of the operation of election schedule notified vide Memo No. 159 dated 20.02.2018.

4. I have heard learned counsel for the parties and perused the record.

5. I find substance in the objection raised by the learned counsel for the Bihar State Election Authority. In *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra* (Supra), the Supreme Court has clearly held that the principles of law relating to Representation of People's Act, 1951 shall extend to election of other Co-operative Society. In para-12 of the said judgment, the Supreme Court observed :

"In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll...."

6. In *Shaji K. Joseph Vs. V. Vishwanath & Ors.* (Supra), the issue before the Supreme Court was with regard to election of a member to the Dental Council of India under Section 3(a) of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952. The Supreme Court once again reiterated the settled law that once the process of election starts, no Court should interfere with the election process. It held that the High Court was not right in interfering with the process of election specially when the process of election had started upon publication of the election programme and more particularly when an alternative statutory remedy was available to the respondent by way of referring the dispute to the Central Government as per the provisions of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952.

7. In view of the availability of an equally efficacious statutory remedy under Section 48 of the Bihar Co-operative Societies Act, 1935 in respect of addition of members of the Society, I am of the considered opinion that at this stage it would not be proper for this Court to issue any direction to the respondent authority in this regard. Further, in view of the aforesaid decisions of the Supreme Court, I am of the opinion that it would also not be proper for this Court to stay the operation of the election schedule notified vide Memo no. 159 dated 20.02.2018.

8. In that view of the matter, the writ petition is dismissed.

However, the petitioner would be at liberty to resort to other remedies available in law after the election process is over.