
(2016) 02 PAT CK 0111

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.18019 of 2014

Tharthari Prakhand Matasyajivi Sahyog Samiti Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Citation : (2016) 2 PLJR 602

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Rakesh Kumar Jha and Umesh Kumar Verma, Advocates, for the Appellant; Kaushal Kishore, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J. (Oral) - Heard the parties.

2. The petitioner is aggrieved by the order dated 23.5.2013/27.6.2013 of the Joint Registrar, Cooperative Societies, Bihar, Patna passed in Election Dispute Case No.172 of 2012 whereby the entire election to constitute the managing committee of Tharthari Prakhand Matsyajivi Sahyog Samiti Limited (hereinafter referred to as the "Society") in the district of Nalanda has been set aside, inter alia, on grounds of infracted voter-list.

3. I have heard Mr. Rakesh Kumar Jha, learned counsel appearing for the petitioner, Mr. Kaushal Kishore, learned Assisting Counsel to Government Pleader No.23 for the State, counsel for the State Election Authority and Mr. Rajesh Kumar Singh, learned counsel appearing for the private respondent no.9 who was the election petitioner before the prescribed authority.

4. It is not in dispute rather it is an admitted position which is also manifest from the election petition so filed by the private respondent before the prescribed authority that the foundation for maintaining the election dispute was on alleged illegality in the voter-list, as according to the election petitioner, though there were only 23 members in the society's voter list which was forwarded by him but

the statutory authorities under the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act") and the Bihar State Election Authority Act, 2008 (hereinafter referred to as the "Act of 2008") have by misapplication of the statutory provisions enhanced the same to 87 which is not the correct reflection. According to him the persons included are not the members of the "Society" in question rather are outsiders. The contentions advanced by the election petitioner was upheld and the election has been set aside resulting in the present writ petition.

5. Although extensive arguments have been advanced by Mr. Jha, learned counsel appearing for the petitioner to canvass that a voter-list simpliciter cannot be a ground for setting aside the election of elected body as a whole, while the order impugned is being supported by Mr. Singh, learned counsel appearing for the private respondent but I would not be required to delve deep in the controversy.

6. As I have already observed above while the election petitioner claims only 23 members but the voter-list for the "Society" in question shows 87 voters. The addition of 64 members is being questioned by the election petitioner which has infringed the voter-list.

7. There are two steps for entry of a person in the voterlist. He has to gain entry to the membership of the society which is followed by his name being included in the voter-list. Meaning thereby unless a person is a member of the society he cannot be included in the voter-list of the society. Thus a challenge to the voter-list by the election petitioner simply on ground that outsiders were included in the voter-list would not suffice until he is able to establish that the membership itself is illegal before the proper forum under "the Act" and not the forum prescribed under the "Act of 2008". The election petitioner in fact while raising a membership issue was, questioning the election. May be the election petitioner was possessed with an issue to canvass but definitely it was being canvassed before the wrong forum for the prescribed authority while considering the election dispute is not required to enter into the membership issue. In fact until such time that the election petitioner would have brought about an adjudication on the membership of these 64 persons whom he claims to be outsiders, he had no business to question their inclusion in the voter-list. The moment a person enters the voter-list it impliedly means that he has the membership of the society and once he has a membership of the society then it can only be cancelled either by the society itself or by questioning the same before the proper forum which under "the Act" is the Registrar, Cooperative Societies under section 48 of "the Act".

8. The election petitioner has in fact mixed up two distinct issues to maintain the election petition which is impermissible in law for until such time that the membership of these 64 persons is set aside by a proper forum under section 48 of "the Act" it cannot be a subject matter of an election dispute. It is a different aspect that even an election petition under section 14A (6) of "the Act" read with

section 10 of the "Act of 2008" is to be adjudicated in the manner prescribed under section 48 of "the Act" but then the grounds are listed in section 12 of the "Act of 2008" and which is entirely distinct to a membership issue.

9. Mr. Singh, learned counsel appearing for the election petitioner has tried very hard to bring the case within the parameter of section 12(1)(d)(iv) of the "Act of 2008" to submit that the statutory authorities having committed statutory violation in preparing the voter-list, the issue is fully covered under the said provision but in my opinion the said argument is not sustainable for the reason that it is not an allegation of infracted voter-list simpliciter that can draw the issue in favour of the election petitioner rather he has to establish that these allegedly ineligible voters have contributed to the success of the returned candidate. There is complete absence of pleadings on such issue.

10. Another aspect which is staring at the face of the election petition is that even when the election petitioner seeks to question the right of these 64 persons to vote but he has not chosen to implead them as parties. In other words the votes cast by some of these person stands invalidated under the impugned order on grounds of their ineligibility but without their presence and opportunity to them to present their case. The election petition is neither maintainable on merits nor on the issue of non-joinder of parties and has been mechanically entertained by the prescribed authority without application of mind. The illegality is perpetuated when the prescribed authority has gone ahead to set aside the election of the body as a whole.

11. For the reasons aforementioned the order dated 23.5.2013/27.6.2013 passed by the Joint Registrar, Cooperative Societies, Bihar, Patna in Election Dispute Case No. 172 of 2012 cannot be upheld and is accordingly set aside. The body of the managing committee of Tharthari Prakhand Matasyajivi Sahyog Samiti Limited is restored to its original position.

12. The writ petition is allowed.

13. Let the records so produced by the State Counsel be returned to him.