
(2010) 10 PAT CK 0110
In the Patna High Court
Case No : CWJC No. 15067 of 2010

Vijay Krishna Prasad Nishad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Bihar Co-operative Societies Rules, 1959 — Rule 48(vi)

Citation : (2011) 2 PLJR 773

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—Heard Counsel for the Petitioner, Counsel for the interveners and the Counsel appearing on behalf of the State.

2. This writ application has been filed challenging the order contained in Annexure-1 passed by the Joint Registrar, Co-operative Societies, Darbhanga. By the impugned order, the election petition has been set aside on three grounds, namely, that one of the members of the society had been removed; that the Petitioner society was a defaulter and thirdly, because the process of counting after election took place on the next date.

3. The submission made on behalf of the Petitioner is that the finding that one of the members had been removed or that the Petitioner society was a defaulter is beyond the record. There is nothing to substantiate these two findings of the Joint Registrar. In order to support his case, the Petitioner has referred to Annexure-5 which deals with the objection raised before the Election Officer that the Petitioner society was a defaulter. The Election Officer has found that in fact the Petitioner society was not a defaulter society. The claim that the procedure for holding the election was not correctly followed, inasmuch, as the counting took place on the next day which is contrary to the rules, is non est in view of the submission of the Petitioner that ample precaution was taken for postponing the counting to the next day, as the ballot boxes were sealed and kept in a safe place. It is said that due to the fact that it had become dark, there was no

arrangement of generator, counting could not take place on the same day.

4. Counsel appearing on behalf of the interveners has submitted that the Petitioner ought to have filed an appeal u/s 48 (vi) of the Bihar Co-operative Societies Rules. It is also submitted that the entire election process is vitiated on the ground that the Assistant Registrar is not the competent authority to conduct the election as per Rule 21 (B) of the Rules. It is further submitted that the Petitioner Vijay Krishna Prasad Nishad has been convicted in a case numbered as Sessions Trial No. 1 of 1989 by judgment dated 15th May, 2000.

5. The Respondents 4 to 13 are some of the persons who were elected. These Respondents had not been noticed by the Joint Registrar and it is submitted that they would have the right to justify the election by which they were elected members of the Managing Committee of the Jale Prakhand Matsyajivi Sahyog Samiti Limited.

6. On perusal of the order as contained in Annexure-1, I find that several issues raised before this Court have not been dealt with by the Joint Registrar. First and foremost amongst them is that the fact that no notice was issued to Respondents 4 to 13 who were elected, in the election which is under challenge. It appears that the points raised on behalf of the Petitioner regarding the procedure of counting after the elections was not considered or perhaps not placed before the Joint Director. It is also apparent that the issues such as the Petitioner being sentenced in a criminal case or the issue regarding whether the procedure of the entire election would be vitiated on the ground that the District Co-operative Officer did not have the power to conduct election, has not been addressed by the Joint Registrar.

7. In the circumstances, I direct that all three parties i.e. the Petitioner, the interveners and the Respondents 4 to 13 should appear before the Joint Registrar, Co-operative Societies, Darbhanga on 25th October, 2010 and the Joint Registrar will consider all aspects raised in the writ application as well as any other points raised on behalf of the parties and decide the issues within a period of one month from the date on which the parties complete their pleadings.

8. Obviously, Annexure-1 dated 4.8.2010/7.8.2010 cannot be upheld in view of the facts stated aforesaid.

9. This writ application is disposed of with the aforesaid observations and directions.