

(2016) 02 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10277 of 2015

Yugeshwar Prasad @ Yugal Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2016) 3 BLJud 242 : (2016) 3 PLJR 333

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Sushanta Kumar Das and Mr. Ashok Kumar Jha, Advocates, for the Appellant; Mr. Sanjay Kumar Singh, AC to AAG-12, Mr. Mukesh Kumar, Advocate, Mr. Arun Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Jyoti Saran, J. (Oral)—Heard Mr. Sushanta Kumar Das, learned counsel appearing for the petitioner, Mr. Sanjay Kumar Singh, learned Assisting Counsel to Additional Advocate General No. 12 for the State, Mr. Mukesh Kumar for the State Election Authority and Mr. Arun Kumar for the private respondent no. 6.

2. The election of the petitioner to the post of Chairman, Primary Agriculture Credit Cooperative Society, Kurwama in the district of Gaya has been cancelled vide order passed on 23.5.2015/27.5.2015 by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya, inter alia, on grounds of illegal voter list. The Joint Registrar does not stop here and after declaring the election of the petitioner as Chairman of the society as void, has further proceeded to declare the voters whose names appear at serial nos.908 to 1089 of the voter list as illegal. It is considering the apparent illegality of the order that notice was issued to the private respondent.

3. This matter was considered on 14.8.2015 when Mr. Das framed the following issues for consideration:

(a) The election petition so framed itself was not maintainable under section 10

of the Bihar State Election Authority Act, 2008 inasmuch as the persons whose names appeared in between serial nos. 908 to 1089 were not arraigned as party nor the returned candidates were made party; and

(b) The petitioner having contested the election on the same voter-list is estopped from questioning the election on the infirmity of the voter-list.

4. Apart from the issues so raised by Mr. Das another peculiarity in the contest is that although the application so framed by the respondent no.6 present at Annexure-1 raises a membership dispute but while seeking a relief he has deviated therefrom to seek a direction of nullification of the voter-list from serial nos.908 to 1089. Even when the respondent no.6 who happens to be the Ex-Chairman of the society questions the inclusion of the voters whose names are appearing at serial nos.908 to 1089 but he does not choose to arraign them as a party. Apparently while raising a membership issue of others, the Ex-Chairman seeks to question the very election of the present petitioner. It's the absurdity of prayer which was granted, that has led to issuance of notice vide order dated 14.8.2015.

5. The parties have appeared and have filed their affidavit. The counter affidavit of the Joint Registrar in paragraphs 10 to 13 justifies the impugned order inter alia, on grounds that it was a membership dispute and not an election dispute and thus maintainable under section 48 of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as "the Act"). According to him the moment the membership of a returned candidate is set aside then in view of the consequences flowing under rules 24 and 25 of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as "the Rules") he ceases to hold membership as well as the post.

6. There is absolutely no issue with regard to the legal position and no sooner a returned candidate loses his membership for reasons attributable in rule 24 of "the Rules" he subjects himself to the consequences mentioned in rules 24 and 25 of "the Rules" whereby he ceases to hold such office and has the effect of nullification/cancellation of his election. To that extent the justification by the Joint Registrar does not suffer any infirmity. The infirmity lies in the very petition which apparently was not maintainable. Raising a membership issue the respondent no. 6 first files an electoral dispute and then proceeds to seek a declaration to nullify the voter-list in so far as the voters present at serial nos.908 to 1089 is concerned. Had the Respondent no. 6 restricted himself to the membership issue, the matter would have been different but the situation is otherwise and here the respondent no. 6 also prays for cancellation of the voter-list which translates the dispute into an election dispute. The illegality does not stop here and is perpetuated when the respondent no.6 while questioning the eligibility of the voters appearing at serial nos. 908 to 1089 does not choose to arraign them as opposite parties to the contest. Even the Joint Registrar has not bothered to direct the respondent no. 6 to remove this lacuna. The illegality in the miscellaneous petition present at Annexure-1 is irreversible for in the nature

of dispute raised, the relief so prayed was not acceptable and in absence of the voters the petition also suffered from the vice of non-joinder of necessary parties.

7. For the reasons so discussed, I would not detain myself any further to hold that neither the petition in the miscellaneous case was maintainable in its form nor the order passed thereon is capable of being upheld.

8. In the result, the entire proceedings arising from Miscellaneous case No.36 of 2014-15 including the order dated 23.5.2015/27.5.2015 passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya is held illegal and is accordingly set aside. The writ petitioner stands restored to his elected post of Chairman, Kurmawa Primary Agriculture Credit Cooperative Society.

9. The writ petition is allowed.

10. This order, however, would not preclude the respondent no.6 to proceed afresh in accordance with law.