

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24786 of 2019

Umesh Kumar, Male, aged about 31 years, Son of Sitaram Singh, Resident of Village and P.O. Pirapur Mathura, P.S.- Goraul, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna.
3. The District Magistrate-cum- District Election Officer (Cooperative) Vaishali at Hajipur, District- Vaishali at Hajipur.
4. The Assistant Registrar, Cooperative Societies, Hajipur Circle, District- Vaishali at Hajipur.
5. The District Cooperative Officer, Vaishali at Hajipur, District- Vaishali at Hajipur.
6. The Block Development Officer-cum- Returning Officer 2019 Cooperative Election, Goraul Block, District- Vaishali at Hajipur.
7. The Block Cooperative Officer Goraul, District- Vaishali at Hajipur.
8. Managing Committee of Pirapur Mathura Primary Agriculture Credit Cooperative Society Ltd., P.O. Pirapur Mathura, P.S. and Block- Goraul, District- Vaishali at Hajipur through the Chairman.
9. The Chairman, Managing Committee of Pirapur Mathura Primary Agriculture Credit Cooperative Society Ltd., P.O. Pirapur Mathura, P.S. and Block- Goraul, District- Vaishali at Hajipur.
10. The State Election Authority Bihar, Patna through the Chief Election Officer.
11. The Secretary, the State Election Authority, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate with Mr. Awnish Kumar, Advocate and Mr. Kumar Gaurav, Advocate
For the State	:	Mr. Syed Iqbal Ahmad, SC 20
For the State Election Authority	:	Mr. Mukesh Kumar, Advocate
For the Respondents No. 8 and 9	:	Mr. Sanjay Kumar, Advocate with



Mr. Raja Ram Rai, Advocate
For the Vigilance : Mr. Anjani Kumar, Sr. Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 09-01-2023

Heard Mr. S.B.K. Manglam, learned counsel for the petitioner; Mr. Syed Iqbal Ahmad, learned SC 20 for the State; Mr. Mukesh Kumar, learned counsel for the State Election Authority; Mr. Sanjay Kumar, learned counsel for the respondents no. 8 and 9 and Mr. Anjani Kumar, learned senior counsel for the Vigilance.

2. Pursuant to order dated 05.03.2020, the following officers namely, Mr. Alok Raj, D.G., Vigilance; B. Rajendra, Principal Secretary, G.A.D.; Ms. Bandana Preyashi, Secretary, Department of Co-operation; Mr. Yashpal Meena, D.M., Vaishali; Mr. Uday Kumar, B.D.O., Goraul, Vaishali and Mr. Amit Kumar, C.E.O., Goraul are present in person.

3. The issue started on a simple note; whether 392 members of the concerned PACS who had applied for membership deserved to be included in the voter list for the ensuing elections which were scheduled for 13.12.2019. During the course of the case, it transpired that initially all the 392 persons had applied



online for seeking membership before the Managing Committee but there was controversy as to whether their applications were allowed or rejected. From the pleadings various documents have come to indicate that on 29.01.2019 itself, the applications of some of the applicants were rejected online. However, the proceedings of the Managing Committee of the concerned PACS discloses that out of the 392 applications, there was error in either signing by the applicant or counter signing by two members and only with regard to such applications a decision was taken to reject their requests for inclusion in the electoral role and being granted membership, but with regard to the rest applications in which there was no defect, the same were allowed to be made members. However none of the applicants out of 392 were ever made members and as per their stand, no decision was communicated to them which led to 13 out of those 392 moving before the Assistant Registrar, who allowed their prayer for being included on the ground that no adverse decision or order of rejection on their request was communicated to them. Again the voter list which was prepared initially included only those 13 persons, but subsequently the authorities *suo motu* on some communication by the Department dated 05.07.2019 included all 392 persons in the said list. When the matter was brought before



the Court, the list was again revised and those 392 persons were again deleted from the voter list.

4. Today, on the basis of pleadings, hearing learned counsels as also the assistance by the officers concerned, it is not clear as to on what date the order rejecting the application of the 392 persons was actually posted/ uploaded online, though the date says 29.01.2019.

5. At this juncture, on a specific query to learned counsel representing respondents no. 8 and 9, who were the then officer bearers of the PACS in question, as to on which date it was uploaded, he has not been able to give any date. Moreover, when the Court again put a further question to him as to how many and who were the persons and where was the list of persons whose applications being found in order and were directed to be included and whose was rejected, he was unable to produce any list or even to give the number of the persons whose applications were allowed.

6. It has further been informed to the Court that the elections based on the voter list minus the 392 applicants has already been concluded but result has not been declared.

7. From the entire pleadings on record and the assistance received from the learned counsels and the officers, the Court has



no hesitation to record that the preparation of the voter list stands vitiated, either due to non inclusion of 392 persons even after expiry of the time limit for considering their request for being added as members or even otherwise, since the Managing Committee which is the empowered body to consider such applications to reject or accept their claim since neither the number is given nor the specific details of the persons whose application was either rejected or allowed has been brought before the Court. The Secretary, Department of Co-operation, Government of Bihar fairly submits that the list itself stands vitiated and thus, the election process cannot be said to be in accordance with law.

8. Having given our anxious thoughts, the Court would like to indicate, what is going through its mind. On the one hand, elections have been held minus the 392 persons who had applied well before the preparation of the voter list. On the other hand, the body which was competent to consider i.e., the Managing Committee itself in the resolution brought on record has accepted the application of some of the persons and rejected some, which clearly means that out of 392 persons at least some were allowed. Once they were allowed, they had to be made members and their names ought to have figured in the voting list and they had a right to take part in the election. Admittedly, all 392 persons have been



left out. This 392 figure compared to 1116, which is the numbers of persons included in the voter list, is a large number to be ignored without the due process of law which clearly, at the cost of repetition, the Court has held has not been done.

9. Accordingly, taking an overall view in the matter, the Court holds that the election cannot be sustained and the exercise has to be redone right from the inception i.e., preparation of the voter list itself. However, the said exercise will be limited to the 1116 members already there in the voter list and the 392 fresh applicants.

10. The State Election Authority is directed to issue fresh programme starting from the stage of preparation of voter list. The Court would indicate that the consideration would not extend beyond the 1116 persons already being on the voter list and the concerned 392 applicants and the exercise shall be taken to its logical conclusion, strictly in accordance with law including the statutory aspect of the Act and the Rules as also the bye-laws of the PACS. The same be initiated within four weeks from today. Further, any objections which may be filed shall be dealt with and disposed of in time strictly in accordance with law after proper consideration of both the factual and legal aspects.



11. Coming to the issue of there being grave irregularity committed by the officers of the Co-operative Department especially at the district level, the Court was of the opinion that the enquiry be entrusted to the Vigilance Department for which Mr. Alok Raj, the Director General, Vigilance is present in the Court. However, in view of the request made by the Secretary, Department of Co-operation, Government of Bihar that she may be entrusted with holding an in house enquiry and also to lay down strict guidelines with regard to how the officers of the Department are to act in cases related to the constitution of Managing Committees/ Governing Bodies of Co-operative Societies at all levels, the Court acceding to such request refrains from directing for any vigilance enquiry, for the present. However, the Court has been assured that such exercise would be completed within two months and also strict and specific guidelines would be issued. The Court would only add that the departmental officers should also be communicated that any violation and failure to strictly adhere to those guidelines shall be treated as misconduct and shall lead to penal consequences. The Court expects that based upon the enquiry with regard to the conduct of the then officers in the present case, responsibility shall be fixed and action shall be taken.



12. The writ petition stands disposed of in the aforesaid terms.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

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