

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15272 of 2014

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1. Naseema Khatoon W/o Md. Sanaullah Ansari, Prakhand Pramukh, Panchayat Samiti Chiraiya, P.S.- Chiraiya, District- East Champaran (Motihari).

.... Petitioner/s

Versus

1. The State of Bihar, through the Principle Secretary, Panchayat Raj Department, Govt. of Bihar, New Secretariat, Patna.
2. The State Election Commissioner, State Election Commission, Sone Bhawan, 3rd Floor, Beer Chand Patel Path, Patna.
3. The State Election Commission, through its Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd floor, Veer Chand Patel Path, Patna - 80001.
4. The Divisional Commissioner, Tiruhut Division, Muzaffarpur.
5. The Collector-Cum-District Magistrate-Cum District Election Officer (Panchayat), District - East Champaran (Motihari).
6. The Sub-Divisional Magistrate Sikrahana (Dhaka)-Cum-Election Officer, Panchayt Samiti Chiraiya, District- East Champaran (Motihari).
7. The Block Development Officer-Cum-Executive Officer, Panchayat Samiti Chiraiya, District- East Champaran (Motihari).
8. The District Pachayati Raj Officer, East Champaran, District- East Champaran (Motihari).
9. Mausami Devi, Ex-Pramukh, Panchayat Samiti, Chiraiya, W/o Surendra Sahni Resident of Village - Lalbegiya, P.S.- Chiraiya, District- East Champaran (Motihari).
10. Shri Shambhu Thakur, S/o not known to the petitioner
11. Shri Ram Adya S/o not known to the petitioner
12. Shri Mohammd Anjum S/o not known to the petitioner
13. Shri Nasim Alam S/o not known to the petitioner
14. Shri Upendra Rai S/o not known to the petitioner
15. Shri Birbal Mehra S/o not known to the petitioner
16. Shri Prabhakar Prasad S/o not known to the petitioner
17. Shri Jamiri Sah S/o not known to the petitioner
18. Shri ChandanKumar S/o not known to the petitioner
19. Shri Gajendra Kunwar S/o not known to the petitioner
20. Shri Md. Jubaid S/o not known to the petitioner
21. Shri Dharmendra Kumar Singh S/o not known to the petitioner
22. Shri Shri Niwash Tiwari S/o not known to the petitioner
23. Shri Md. Rafique Nawaz S/o not known to the petitioner
24. Smt. Poonam Kaushik W/o not known to the petitioner
25. Smt. Sunita Devi W/o not known to the petitioner
26. Smt. Rampati Devi W/o not known to the petitioner
27. Smt. Renu Devi W/o not known to the petitioner
28. Smt. Antima Devi W/o not known to the petitioner
29. Smt. Usha Devi W/o not known to the petitioner null
30. Smt. Meena Devi W/o not known to the petitioner
31. Smt. Kiran Devi W/o not known to the petitioner
32. Smt. Laljhari Devi W/o not known to the petitioner
33. Smt. Gayatri Devi W/o not known to the petitioner

34. Smt. Sumitra Devi W/o not known to the petitioner
 35. Smt. Akbari Khatoon W/o not known to the petitioner
 36. Smt. Meena Devi W/o not known to the petitioner
 37. Smt. Phoolmati Devi W/o not known to the petitioner
 38. Smt. Malti Devi W/o not known to the petitioner null
 39. Smt. Rubaida Khatoon W/o Nasim Akhatar Raen, Member Panchayat Samiti, Chiraiya, P.S.- Chiraiya, District- East Champaran (Motihari).
 Respondent No. 9 to 39 are members of the Panchayat Samiti of Chiraiya, District- East Champaran, represented through the Executive Officer-Cum-Block Development, Chiraiya, District- East Champaran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.
 Mr. Uday Pratap Singh, Adv.
 For the Respondent-State: Mr. Nadeem Seraj, GP-20
 For the Commission : Mr. Amit Shrivastava, Adv.
 Mr. Sanjeev Nikesh, Adv.
 For the Private Respondents: Mr. Sri Prakash Srivastava, Adv.
 Ms. Anu Priyadarshni, Adv.
 Mr. Shankar Kumar Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

4 08-04-2015 Heard Mr. Rajendra Narain, learned Senior counsel for the petitioner, learned counsel for the State, learned counsel for the Commission, Mr. Sri Prakash Srivastava as well as Mr. Shankar Kumar Thakur for the private respondents.

The petitioner is aggrieved by the order dated 27.7.2013 passed by the District Magistrate-cum-District Election Officer Panchayat, East Champaran at Motihari whereby he has set aside the election of the petitioner as a Pramukh of Panchayat Samiti, Chiraiya in the District of East Champaran on grounds of suffering from procedural infirmity.

Facts are not too elaborate and briefly stated is that the



respondent No.9 was elected as Pramukh of the Panchayat Samiti on 28.6.2011. A no confidence motion was moved against her and which was questioned by the respondent No.9 before this Court in C.W.J.C. No. 16088 of 2014. The matter was heard and the writ petition was allowed. The bench while quashing the notice issued directions to the Executive Officer to issue notice fixing 5.10.2013 as the date of special meeting for consideration of the no confidence motion so moved against the respondent.9. It is not in dispute that the special meeting was held on 5.10.2013 and in which the respondent No.9 was unseated. A fresh election was announced to elect a new Pramukh and was notified by the State Election Commission vide letter dated 8.10.2013 fixing 25.10.2013 as the date of election. The programme for the election was circulated, a copy of which is placed at Annexure-9 to the writ petition. Election was held on 25.10.2013 in which 18 of the 32 members of the Panchayat Samiti participated and since it was the petitioner alone who had filed a nomination that she was declared elected uncontested. The election of the petitioner was questioned by the private respondents before the District Magistrate-cum-District election Officer vide an election petition filed under Section 157 of the Bihar Panchayat Raj Act inter alia on grounds that they had been deliberately obstructed in not



participating in the election. It was also contended by these complainants that an undue hurry was shown by the statutory authorities in conducting the election and in declaring the petitioner elected uncontested. It is argued the authorities conducting the election did not adhere to the timing circulated in the programme. It was the contention of these 16 complainants that two of them some how entered the venue of election and were waiting for the rest 14 of them when the election result was declared uncontested. The District Magistrate taking note of the grievance and after hearing the parties vide order impugned dated 27.12.2013 set aside the election and which order stands confirmed by the State Election Commission vide order passed on 13.8.2014 and being aggrieved the petitioner is before this Court.

Although there have been extensive arguments by Mr. Narain learned Senior counsel for the petitioner and Mr. Srivastava as well as Mr. Thakur appearing for the private respondents but it is taking note of the nature of the dispute that upon a direction of this Court, the compact disc containing the election recording was produced by Mr. Nadim Seraj learned G.P.20 for the State.

The issues raised by Mr. Narain to question the orders impugned stands recorded in the order of this Court passed on

9.9.2014 and which are as follows:

“(a) The non impleadment of 18 persons who had participated in the election had vitiated the proceedings in their absence.

(b) The District Magistrate even while relying upon Clause 12 of the Circular dated 3.6.2009 has not reproduced the entire provision which while requiring that the proceeding should await the arrival of the members upto 1 hour of the notified time yet provided that once the election process has started, the late comers would not be allowed to participate.

(c) While upholding the claim of the election petitioners that they were forcibly restrained from participating in the election, no reference has been made to the circumstances taken note of by the returning officer in his report placed at Annexure-10 and which amply explains the circumstances in which the petitioner was elected uncontested.

(d) Even if the claim of these 14 petitioners is to be accepted on the face value, yet it would not make any alteration in the result of the election in view of the fact that there were 18 persons present at the time of election who did not object to the petitioners candidature.

(e) The casual approach by the statutory authorities is reflected from the fact that whereas the election case has not even been registered by the District Magistrate, the appellate order does not express application of mind in as much as no reasons have been assigned to support the conclusions.”

As against the submissions made by Mr. Narain it has been argued by Mr. Srivastava and Mr. Thakur appearing for the private respondents that the election was held in violation of the statutory guidelines issued by the State Election Commission which required the conducting officer to abide by the timing and which had not been followed and that it was wholly on account of circumstances beyond control of the private respondents that they



could not participate in the election. It was thus with reference to the provisions underlying Section 157 of the Act it was submitted that the District Magistrate has been fully empowered to consider such issues so as to interfere where the conducting officers have acted beyond jurisdiction and in contravention of the statutory provisions. It is further the argument of Mr. Srivastava that although the petitioner had gone in appeal before the State Election Commission but she had failed to raise any issue requiring adjudication on the impugned order. It was submitted that in fact it was the contention of the petitioner that the order of the District Magistrate had not taken its effect and thus she was already officiating as a Pramukh. It was submitted that Commission taking note of the loss of interest on the part of the appellant petitioner as well as the statutory violation committed by the Returning Officer in obstructing the private respondents to participate in the election, has passed the order requiring a reelection which suffers from no infirmity.

Having heard the rival contentions advanced on behalf of the contesting parties and considering that the only issue that cropped up in the present proceeding was whether the private respondents were indeed obstructed from participating in the election resulting in the uncontested election of the petitioner, that

this Court decided to view the compact disc which recorded the election and which compact disc was viewed in presence of the counsel appearing for the contesting parties.

The minute to minute recordings of the election of the Pramukh which was put to question before the District Magistrate and which was subject matter of the appeal, shows that at 10.46 A.M., 18 members arrived in the room where the election was to be held meaning thereby that a false statement was made by objectors before the District Magistrate that 16 of them were obstructed from participation. The attendance of these 18 members were marked and they were made aware about the procedures. The nomination took place at about 11.32 A.M. when the nomination paper was filed by the petitioner and the results were declared at 11.41 A.M. since there was a single nomination. It is thereafter at about 11.45.14 A.M. that 14 persons arrived in a leisurely manner and when they were told by the officers that they had not arrived as per the time schedule communicated to them which they were asked to verify from the notices/ communication issued in their favour. The recordings shows that the 14 persons after perusing the letters notifying the election programme did not raise any voice of protest rather returned peacefully. The recordings of the compact disc reflects following important

features namely:-

(a) That 18 persons had collectively arrived at the venue at 10.46 A.M. meaning thereby the statement made by the private respondents in the complaint stating that 16 of them were obstructed of which Lal Jhari Devi and Ram Adya subsequently could manage to enter the venue is a false statement. Two groups had arrived, one group of 18 members arrived at 10.46 A.M. and the other group of 14 persons arrived at 11.45 after the declaration of result.

(b) Even if these 14 persons could have participated, since 18 persons had voted in favour of the petitioner there could be no alteration in result.

(C) There was not even a whisper of protest by either of these 14 persons nor they made any complaint regarding any kind of obstruction faced by them rather they silently accepted the result without any protest.

(D) The proceeding is founded on false statements of the objectors.

It is apparent from the disc that the complaint preferred by these 14 persons before the District Magistrate is an afterthought and contains false statement. It is rather surprising that even when the District Magistrate as well as the State Election Commission

were well aware of the live recording of the election they did not bother to satisfy themselves before recording their opinion upsetting the election, of the petitioner.

For the reasons aforementioned the order dated 27.7.2013 passed by the District Magistrate as contained in Annexure-14 as well as the appellate order dated 13.8.2014, a copy of which finds mentioned at Annexure-17 cannot be upheld and are accordingly set aside.

The writ petition is allowed and the petitioner stands restored to the post of Pramukh.

The compact disc produced by Mr. Nadim Seraj G.P.20 is returned to him in a sealed cover.

(Jyoti Saran, J)

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