

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1170 of 2014

IN

Civil Writ Jurisdiction Case No. 9361 of 2014

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Manoj Kumar Singh, Son of Sri Madan Singh, Resident of Mohalla Pratappur, Police Station Hussainganj, District Siwan, at present residing at Flat No. F103, Daroga Rai Path, M.L.C. Flat, Patna-800001 (Bihar).

.... Appellant

Versus

1. The Bihar Legislative Council, Bihar, Patna through the Secretary.
2. Chairman, Bihar Legislative Council, Bihar, Patna.
3. Secretary (Working), Bihar Legislative Council, Bihar, Patna.
4. Under Secretary, Bihar Legislative Council, Bihar, Patna.
5. Election Commission, Government of India, Election Sadan, Ashoka Road, New Delhi-110001 through the Chief Election Commissioner.

.... Respondents

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Appearance :

For the Appellant : Mr. Sanjay Kumar Pandey, Advocate
For Respondent Nos.1 to4: Mr. Sunil Kumar Singh,
Mr. Surendra Kumar Singh, Advocates
For Election Commission: Mr. J.P. Karn, Sr.Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 02-02-2015

This letters patent appeal is preferred against the order dated 20.06.2014 passed by the learned Single Judge in CWJC No.9361 of 2014. The appellant filed the said writ petition and the learned Single Judge dismissed the same.

2. The brief facts are that; the petitioner was elected as a Member of the Bihar Legislative Council in the year 2009, and his term is upto 23rd July, 2015. The Office of the Chairman of the Bihar Legislative Council issued an order dated 24.04.2014 to the effect that

resignation of the petitioner from the membership of the Legislative Council is accepted with effect from 21.04.2014 by the Chairman in exercise of power conferred under Article 190(3) (b) of the Constitution of India. The said order was challenged in the writ petition.

3. The appellant pleaded that he did not appear personally before the Chairman of the Council, and still the resignation was accepted. He contended that unless the member concerned presents himself before the Chairman, the resignation cannot be accepted.

4. The respondents have filed a counter affidavit opposing the writ petition. It was pleaded that the appellant was elected as a Member of the Legislative Council as an independent candidate and since he wanted to contest the Parliament elections as a candidate from Janta Dal (United), he submitted his resignation, to avoid disqualification. It was stated that not only the letter of resignation was submitted by the appellant but also he telephonically informed the Office of the Council to expedite the process, so that he may be in a position to file nomination without fear of any disqualification. It is stated that the resignation was accepted strictly in accordance with the relevant provisions of law.

5. The learned Single Judge dismissed the writ petition

through order dated 20.06.2014. Hence this appeal.

6. Heard Mr. Sanjay Kumar Pandey, learned counsel for the appellant, Mr. Surnedra Kumar Singh, learned counsel for respondent nos. 1 to 4 and also Mr. J.P. Karn, learned senior counsel for the respondent-Election Commission of India.

7. It is not in dispute that the petitioner was elected as a Member of the Bihar Legislative Council, as an independent candidate in the year 2009 and it was only in April, 2014, his resignation was accepted.

8. At the outset, one fact needs to be taken into account. The factum of acceptance of resignation became known to every one, so much so that the acceptance of resignation was notified and became public on the day of acceptance itself. However, the petitioner did not choose to protest or challenge it immediately. He approached this Court only on 27.05.2014.

9. It is also necessary to take note of certain events. The Election Commission of India issued a notification in April, 2009 for holding election of 18th Siwan Constituency. The petitioner filed his nomination for that Constituency for Janta Dal (United). The law, as it exists, provides for disqualification, in case a person, who is a Member of legislature, elected from one party, or as independent, files nomination from another party. Obviously for that reason, the

petitioner submitted his resignation from the membership of the Council, before he files nomination for Parliament on behalf of Janta Dal (U) party.

10. In the counter affidavit it is categorically stated that the petitioner himself reported the Office of the Legislative Council on telephone, to accept the resignation to enable him to file nomination and, accordingly, it was accepted by the Chairman with effect from 21.04.2014. The respondents have also stated that the resignation was submitted out of fear of disqualification and after a second thought the writ application was filed.

11. The petitioner did not file any reply to the counter affidavit.

12. Though it is a fact that the concerned authority insists physical presence of the person, who tenders his resignation, in certain cases the same is waived. It is a different matter if the Rule itself mandates physical presence of the candidate, Article 190 of the Constitution does not insist on physical presence of the candidate in the context of resignation of an elected representative. Once the Chairman of the Council is satisfied that the resignation submitted by a Member is genuine, he can certainly accept the same. In case the candidate has any grievance, he has to respond immediately to the same. The record does not disclose that the petitioner has protested

against the acceptance of the resignation and it is only after the results of Lok Sabha Election were declared that the petitioner had chosen to approach this Court.

13. The learned Single Judge discussed the matter at length with reference to the materials available on record and has arrived at the correct conclusion.

14. An important subsequent development is that the vacancy caused on account of the resignation of the petitioner has been filled up in a bye-election. At any rate, the left-over term, of the membership in the Council is just a few months.

15. We do not find any merit to entertain the appeal. The same is dismissed. There shall be no order as to costs.

16. The interlocutory application, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

AFR
B.T/-

(Vikash Jain, J)

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