

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19134 of 2014

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1. Raj Kumari Devi W/o Radharam Ram R/o Village Machhaha, P.S. Mufassil Motihari, District East Champaran, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. District Magistrate, East Champaran, Government of Bihar.
3. Sub Divisional Officer-cum-Returning Officer, Sadar Motihari, District East Champaran, Government of Bihar.
4. The Block Development Officer-cum-Executive Officer, Block Motihari Sadar, District East Champaran.
5. Bihar State Election Commission through its Secretary, Sone Bhawan, Patna.

..... Respondent 1st set

6. Sumukh Devi W/o Ravindra Yadav Panchayat Samiti-26, Block Sadar Motihari, District East Champaran.
7. Gita Devi W/o Virendra Paswan Panchayat Samiti-18, Block Sadar Motihari, District East Champaran.
8. Ramakant Prasad Yadav S/o Vishwanath Prasad Panchayat Samiti-8, Block Sadar Motihari, District East Champaran.
9. Suresh Prasad Yadav S/o Vinda Rai Panchayat Samiti-6, Block Sadar Motihari, District East Champaran.
10. Upendra Rai S/o Yogendra Rai Panchayat Samiti-3, Block Sadar Motihari, District East Champaran.
11. Langat Sah s/o Lakhan Sah Panchayat Samiti-1, Block Sadar Motihari, District East Champaran.
12. Ranjit Kumar S/o Vinay Kumar Saran Panchayat Samiti-4, Block Sadar Motihari, District East Champaran.
13. Babita Devi wife of Dwarika Prasad Panchayat Samiti-4, Block Sadar Motihari, District East Champaran.
14. Kavita Devi wife of Rajendra Ram, Panchayat Samiti-20, Block Sadar Motihari, District East Champaran.
15. Rina Devi, wife of Uday Jha, Panchayat Samiti-25 Block Sadar, Motihari, District East Champaran.
16. Rajkishor Rai, son of Rajbandi Rai, Panchayat Samiti-5, Block Sadar Motihari, District East Champaran.
17. Pramod Mahto, son of Yogendra Mahto, Panchayat Samiti-14, Block Sadar Motihari, District East Champaran.
18. Harikishor Rai, son of Shyamnandan Rai, Panchayat Samiti-16, Block Sadar Motihari, District East Champaran.
19. Siyaram Thakur son of Jagdish Thakur, Panchayat Samiti-4, Block Sadar Motihari, District East Champaran.
20. Babita Devi wife of Chutun Rai, Panchayat Samiti-9, Block Sadar Motihari, District East Champaran.
21. Krishna Devi wife of Mangani Sah, Panchayat Samiti-10, Block Sadar Motihari, District East Champaran.
22. Suresh Prasad son of Ramlal Sah, Panchayat Samiti-7, Block Sadar Motihari, District East Champaran.
23. Parwati Devi wife of Kishori Rai, Panchayat Samiti-15, Block Sadar

Motihari, District East Champaran.

24. Kanti Devi wife of Bhola Das, Panchayat Samiti-11, Block Sadar Motihari, District East Champaran.

25. Indu Devi wife of Dinesh Prasad Yadav, Panchayat Samiti-21, Block Sadar Motihari, District East Champaran.

26. Nilam Devi, wife of Nageshwar Rai, Panchayat Samiti-22, Block Sadar Motihari, District East Champaran.

27. Mahesh Ram son of Bira Paswan, Panchayat Samiti-24, Block Sadar Motihari, District East Champaran.

28. Ramshish Paswan son of Baidhnath Paswan, Panchayat Samiti-23, Block Sadar Motihari, District East Champaran.

29. Ramdev Sahani, son of Phaguni Sahani, Panchayat Samiti-28, Block Sadar Motihari, District East Champaran.

30. Sanjay Ram son of Kapil Dev Ram, Panchayat Samiti-27, Block Sadar Motihari, District East Champaran.

31. Jyapati Devi, wife of Ganga Sah, Panchayat Samiti-13, Block Sadar Motihari, District East Champaran.

32. Ramekbal Roy, son of Late Raman Rai, Panchayat Samiti-2, Block Sadar Motihari, District East Champaran. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.

For the Respondent/s : Mr. R.R.K. Pandey, SC-29

For the Election Commission: Mr. Amit Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 13-04-2015 Heard Mr. Kumar Kaushik, learned counsel for the petitioners, learned counsel for the State and Mr. Amit Srivastava, learned counsel for the State Election Commission.

The petitioner an Ex Pramukh of Panchayat Samiti, Block-Piprakothi, District East Champaran has questioned the results declared by the Returning Officer in respect of the re-election to the post of Pramukh in which the private respondent No.7 has been declared elected.

Facts of the case briefly is stated that following the no confidence motion passed against the petitioner in a special



meeting held on 14.8.2014 that the petitioner was unseated from the post of Pramukh. The resultant vacancy led to a fresh election in which the petitioner also participated. There are 28 members in the Panchayat Samiti of whom one was absent thus 27 members participated in the election which was held on 9.10.2014. The petitioner along with the respondent No.7 filed their respective nominations to contest the post of Pramukh. Of the 27 participants in the election, whereas one vote stood invalidated, the rest 26 votes resulted in equality of votes with each candidate securing 13 votes. In the circumstances, the Presiding Officer resorted to the procedure provided under Rule 98 of Bihar Panchayat Raj Rules (hereinafter referred to as 'the rules') and drew a lot which was drawn in favour of the respondent no.7 who was declared elected. A certificate was issued placed at Annexure-2. The petitioner being aggrieved is before this Court.

Mr. Kumar Kaushik, learned counsel for the petitioner has questioned the election of the respondent no.7 on two grounds namely:

- (a) That though there were only two candidates for election but the nomination paper contained three columns which may have created a doubt and led to invalidation of a vote; and
- (b) Whereas Rule 98 casts a responsibility on the Presiding

Officer to draw a lot, it was done by another person on the instructions of the Presiding Officer.

Mr. Kaushik labored hard to impress upon the Court that since the draw of lot is presided by the word 'shall' in Rule 98 of the Rules, it was only the Presiding Officer who could draw the lot and since it has been done by a person other than the Presiding Officer hence it has invalidated the election. He submits that as the law prescribed the mode and manner for performance of an act it had to be done in that manner alone.

I have heard learned counsel for the parties and perused the records.

In so far as the issue of nomination paper is concerned, the presence of three columns is immaterial for the nomination of a Pramukh is filed on the date of election itself and not earlier, hence the ballot paper is prepared with expected participation. Since election of a Pramukh is internal in nature where only the elected members participate and the nomination takes place on the date of election itself, hence not much weight can be attached to the presence of three columns even when there were only two candidates participating.

Coming to the second objection raised by Mr. Kaushik though agreeably there is substance in the argument of



Mr. Kaushik and an obligation has been cast on the Presiding Officer to draw the lot but the crucial feature of the election is that neither the petitioner has put his written objection on record before the Presiding Officer nor it is his case that upon such authorization made by the Presiding Officer to another person for drawl of lots, he raised his voice in protest. In view of such admitted circumstances and the petitioner having taken a calculative risk with the result going against his interest, he cannot now turn back to question the procedure on the legal provisions on the well known principles of acquiescence and waiver.

For the reasons aforementioned, I am not persuaded to interfere with the result and the writ petition is accordingly dismissed.

(Jyoti Saran, J)

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