

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5122 of 2013

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Md. Kaushar Khan S/o Md. Yusuf Khan R/o Village- Isanagar Naya Tola,
Phulwarisharif, P.S.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The State Election Commission, Bihar, Patna through State Election
Commissioner, Bihar
3. The District Magistrate, Patna
4. The Senior Superintendent of Police, Patna
5. The Superintendent of Police, Jehanabad
6. Md. Mumtaz Arfi S/o Md. Mustafa R/o Mohalla-Nayatola, Ishanagar,
Phulwarisharif, District- Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
Mr. Umesh Kumar Singh, Advocate

For the State : Dr. Anshuman, SC-14
Mr. Kuber Pathak, AC to SC-14

For the State E.C. : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikesh, Advocate

For the private respondent: Mr. Sanjeev Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-09-2015

Heard Mr. Vindhya Keshari Kumar, learned senior counsel
for the petitioner, Dr. Anshuman for the State, Mr. Sanjeev Nikesh for
the State Election Commission and Mr. Sanjeev Kumar Mishra
counsel for the private respondent.

The petitioner is aggrieved by a part of the order dated
09.1.2013 passed by the State Election Commissioner in Case No. 34
of 2012 (Md. Mumtaj Arfi vs. Md. Kaushar Khan) whereby the
Commission even while upholding the election of the petitioner, has
issued directives to the District Magistrate-cum-District Election

Officer, (Municipality) Patna and Jehanabad as well as the Superintendent of Police, Jehanabad, the Officer-in-Charge, Jehanabad to ascertain as to whether Mohd. Kaushar Khan and Kaushar Miyan are one and the same person.

Perusal of the order sheet in the present proceedings reflects that vide order passed on 22.3.2013 reiterated in the order dated 02.4.2013, the petitioner was directed to appear before the District Magistrate, Patna who in turn was directed to authorize a responsible officer to hold an enquiry and submit a report on the issue. The petitioner did appear before the District Magistrate and the report of such enquiry made by the Additional Collector, Patna is placed at Annexure-C to the counter affidavit in which the Additional Collector has opined that the matter would require certain further enquiry on the issue whether Kaushar Miyan and Mohd. Kaushar Khan are one and the same person and had resided at Jehanabad and has been declared an absconder. The Additional Collector's report is dated 13.5.2013 and the criminal case in which the said Kaushar Miyan is stated to be an accused arising from G.R. No. 649 of 1987 / Trial No. 781 of 2015 arising from Jehanabad P.S. Case No. 164 of 1987 fell for consideration before the Chief Judicial Magistrate on 18.11.2013 and when the Chief Judicial Magistrate on appreciation of the dispute has stayed the execution of the warrant issued in respect of Kaushar Miyan @ Mohd. Kaushar Khan s/o Yusuf Khan @ Ishaak Khan. A

report has been called for from the concerned Police Station as to whether Kaushar Miyan @ Mohd. Kaushar Khan s/o Yusuf Khan @ Ishaak Khan are one and the same person or not. It is stated at the bar by Dr. Ansuman, learned State counsel that the warrant so issued has subsequently been stayed.

Having heard learned counsel for the parties and considering that this Court vide order passed on 02.4.2013 directed the petitioner to be present before the District Magistrate, Patna for an enquiry into the matter and to confirm that he is Mohd. Kaushar Khan and not Kaushar Mian and which has been acted upon, in my opinion, the writ petition has been rendered infructuous by the passing of the order which has taken its effect. Since at present there is nothing to prejudice the right of the petitioner and the aggrieved portion of the order passed by the State Election Commission which is the subject matter of the writ petition, has been acted upon, in my opinion, nothing survives for adjudication in the present proceeding which is accordingly disposed of reserving liberty for the petitioner that should the occasion so arise which is adversarial to the petitioner, he would be at liberty to question the order before the appropriate forum.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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