

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11058 of 2014

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1. Lal Bahadur Rai son of Late Parmeshwar Rai, resident of Village Dewantok, P.S.- Gangabridge, District- Vaishali

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The District Election Officer (Panchayat)-cum-District Magistrate, Vaishali at Hajipur
3. The Returning officer-cum-Block Development Officer, Raghapur Block, District- Vaishali
4. Surendra Rai son of late Jangi Rai resident of village Littiyahi, P.S.- Raghapur, District- Vaishali
5. Anil Rai son of Sri Chandradip Rai
6. Parmeshwar Rai son of late Gangasagar Rai
7. Rambilash Rai son of late Faujdar Rai All are resident of village Dewantok, P.O.- Ratnakar, P.S.- Gangabridge, District- Vaishali
8. Ram Kirit Rai son of Sri Ram Janam Rai resident of village- Chaukia, P.O.- Jadua, P.S.- Gangabridge, District- Vaishali
9. Sudist Kumar son of Sri Newa Rai resident of village Littiyahi, P.S.- Raghapur, P.O.- Rajashan, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy No.1, Adv.

For the Respondent/s : Mr. Amit Shrivastava, Adv.

Mr. Girish Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 16-02-2015 Heard Mr. Jitendra Kumar Roy No.1, learned counsel for the petitioner and Mr. Girish Pandey, learned counsel for the State Election Commission.

The petitioner is aggrieved by the judgment and order dated 15.3.2014 passed by the Munsif-II, Vaishali at Hajipur in Election Case No. 23 of 2011 whereby the election petition filed by the petitioner has been dismissed.

The petitioner contested the Mukhiya election for Saraipur Panchayat in the District of Vaishali held on 18.5.2011 and of which the results were declared on 21.5.2011 in which the petitioner got 924 votes against the respondent No.1 who has been declared elected as Mukhiya having secured 1037 votes.

The sole ground on which the petitioner has maintained the election petition is that 239 voters of Saidpur Ganesh Panchayat in the Biddupur block have also cast votes in the election relating to Gram Panchayat, Saraipur.

The election case having been registered, the Election Tribunal framed issues on the basis of the pleadings and issue Nos. 4 and 5 are the core issues relevant for consideration of the matter in contest and which are as follows:

- “(4) Was the election roll for Saraipur Panchayat correctly prepared and it included names of persons of other Panchayat and double entry of same panchayat?
- (5) Is the defendant No.1 legally and validly elected Mukhiya of Gram Panchayat Saraipur?”

The discussion on these issues finds mention at paragraph 9 of the impugned judgment and a perusal thereof manifests that the opinion formed by the Election Tribunal is on the grounds that the petitioner had failed to lead any evidence to support the allegation and secondly that the petitioner has already taken a chance by contesting the election on the same voter list and having

lost the same, has chosen to file the election case and thus on the principles of waiver, the election case was fit to be rejected.

The impugned judgment manifests that although an objection has been taken by the petitioner that the voter list of Saraipur Panchayat and the Saidpur Ganesh Panchayat were overlapping and included 239 common voters but it is admitted position that no objection was raised by the petitioner before the Returning Officer except for an application which is dated 19.1.2011 and addressed to the Panchayat Secretary which was marked as Ext. 1. There is no other document to show that any objection was taken by the petitioner before any of the statutory authorities in respect of the voter list. On the contrary the petitioner has admitted during the course of examination that he had not filed any written objection either before or during the course of election and that other than the voter list there was no evidence regarding participation of the voter of the two Panchayats. In fact, even while the petitioner chose to rely upon an objection filed before the Panchayat Secretary on 18.1.2011 but he never chose to examine the Panchayat Secretary.

In substance except for oral allegations, no evidence was led by the petitioner to demonstrate that the same person had exercised franchisee in two places and which had materially

effected the elections. Records also manifests that no objection to the voter list was taken by the petitioner before any of the statutory authorities on the contrary he has taken a calculative risk to contest the election on the same voter list and after being unsuccessful has chosen to question the same in the election petition. Rightly, the Election Tribunal has not found substance in the issues raised by the petitioner and this Court also is not persuaded to interfere with the opinion formed by the Election Tribunal and would dismiss the writ petition accordingly.

(Jyoti Saran, J)

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