

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11348 of 2016

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Sanja Devi, wife of Mahadeo Jha, resident of Ganaun West, P.S. Ghanshyampur,
District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Darbhanga.
2. The District Magistrate-cum-District Election Officer (Panchayat), Darbhanga
3. The Secretary, State Election Commission, Bihar, Patna.
4. The Block Development Officer-cum-Executive Officer, Ghanshyampur,
District- Darbhanga.
5. The District Panchayati Raj Officer, Darbhanga.
6. Phuldai Devi, wife of Kamalkant Jha, resident of Jaideo Patti, P.S.-
Ghanshyampur, District- Darbhanga.
7. Sabina Khatoon, wife of Zuber Alam, resident of Jaideo Patti, P.S.-
Ghanshyampur, District- Darbhanga.
8. Heera Devi, wife of Rajaram Mahto, resident of village- Tumaul, P.S.-
Ghanshyampur, District- Darbhanga.
9. Buchchi Lal Safi, son of late Jitan Safi, resident of Budhiya Vinaitpur, P.S.-
Ghanshyampur, District- Darbhanga.
10. Mundrika Devi, wife of Binod Mishra, resident of Ghanshyampur, P.S.-
Ghanshyampur, District- Darbhanga.
11. Nasar Nawab, son of Md. Saeed Alam, resident of village Pali, P.S.-
Ghanshyampur, District- Darbhanga.
12. Nand Kumar Jha, son of late Rambir Jha, resident of village Pali, P.S.-
Ghanshyampur, District- Darbhanga.
13. Rabina Khatoon, wife of Hasim Rain, resident of Pahaddi, P.S.- Ghanshyampur,
District- Darbhanga.
14. Ragini Kumari, wife of Bipin Kumar Singh, resident of village Kunhat, P.S.-
Ghanshyampur, District- Darbhanga.
15. Shankar Pandit, son of Chalitra Pandit, resident of village Korthu West, P.S.-
Ghanshyampur, District- Darbhanga.
16. Bahadur Manjhi, son of Anup Manjhi, resident of village Korthu East, P.S.-
Ghanshyampur, District- Darbhanga.
17. Runa Devi, wife of Vishwanath Paswan, resident of village Lagma, P.S.-
Ghanshyampur, District- Darbhanga.

.... Respondents

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Appearance :

For the Petitioner : Mr. Amish Kumar, Adv.
For the Respondent No.3 : Mr. Amit Shrivastava, Adv.
Mr. Girish Pandey, Adv.
For the State : Mr. Awanish Nandan Sinha, GP-21

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 02-08-2016

Heard parties.

This writ application has been filed inter alia for grant of following reliefs:

i) For declaration to the effect that administration of oath/affirmation of 12 elected members of Panchayat Samiti, Ghanshayampur Block held on 11.7.2016 in the office of Block Development Officer, Ghanshayampur, in light of letter dated 5.7.2016 issued by the State Election Commission, Bihar, Patna.

ii) For direction to the respondent concerned to restrain the 12 elected members (respondent Nos. 6 to 17) from discharging their official duty and also from taking any financial or policy decision matter relating to the development of Ghanshayampur Block, Distt. Darbhanga.

iii) For declaration to the effect that administration of oath/affirmation of 12 elected members (respondent Nos. 6 to 17) of Panchayat Samiti, Ghanshayampur, Block held on 11.7.2016 in the office of Block Development Officer, Ghanshayampur, is in teeth of order dated 30.6.2016 passed in CWJC No. 9210 of 2016 and CWJC No. 9848 of 2016.

It would appear from above, that the petitioner, aggrieved by the fact that without holding election of the Panchayat Samiti of Ghanshyampur Block, Distt. Darbhanga, oath has been



administered upon 12 elected members. It is contended that altogether 17 members are to be elected for the concerned Panchayat Samiti. Elections were held, however, elections of five Constituencies were countermanded vide Annexure-1 passed by the Single Judge Bench of this Court on the grounds mentioned therein and fresh elections were ordered. However, without waiting for the election of five such Constituencies, the State Election Commission has proceeded to administer oath upon the members of the Panchayat Samiti.

It is contended on behalf of the petitioner that the moment oath is administered in view of the Provisions of Section 40(1) (c) of the Bihar Panchayat Raj Act (hereinafter referred to as the “Act”), the senior most members would be treated as Pramukh and the Panchayat Samiti would start functioning. He will start functioning as Pramukh of the concerned Pramukh Samiti till election is held and, as such, he would take decision in the policy matter as well as in the financial matters also.

In my view, such objection would not be tenable. Rule 87 of the Bihar Panchayat Rules, 2006 provides the procedure for meeting of election of Mukhiya, Up-Mukhiya, Up-Sarpanch, Pramukh, Up-Pramukh, Adhyaksha and Upadhyaksha for which special meeting has to be convened. For better appreciation, the concerned Rule is extracted as under:

87. Meeting for the election- (1)

*Subject to the supervision, direction and control of the State Election Commission, the date, time and place for the meeting of Gram Panchayat and Gram Katchahry/Panchayat Samiti/Zila Parishad for the election of Up-Mukhiya and Up-Sarpanch, Pramukh, Up-Pramukh, Adhyakasha and Upadhyaksha under Sections 15, 93, 40 and 67 of the Act respectively shall be fixed by the Block Development Officer, Sub-Divisional Magistrate and the District Magistrate, as the case may be and notice of the meeting shall be given to all the members concerned in **Form-24**;*

Provided that, if more than twenty five percent seats of total number of territorial constituencies constituted in Panchayat Samiti or Zila Parishad are vacant, the meeting for election of Pramukh/Up-Pramukh or Adhyakasha/Up-Adhyaksha of the Panchayat Samiti or Zila Parishad shall be fixed only after the completion of election for the vacant posts under the provisions of the Act.

¹*[Provided also that in case the total number of vacant seats exceeds 25 per cent of the total number of seats of the territorial constituencies constituted under any Gram Panchayat/Gram Kutchahari, the date of meeting for election of Up-Mukhia/Up-Sarpanch of the said Gram Panchayat/Gram Kutchahari, shall be fixed only after conducting the election for filling up the vacant posts as per the provision under the Act.]*

(2) in the meeting called under sub-rule (1), first of all, the elected members of Gram Katchahry, Gram Panchayat, Panchayat Samiti and Zila Parishad shall be administered the oath/affirmation in the manner prescribed in rule, 126.

The first Proviso to the Rule 87 lays down in clear terms that if more than 25 percent of seats of total number of territorial

constituencies constituted in Panchayat Samiti are vacant, then the meeting for election of Pramukh/Up-Pramukh shall be fixed only after the completion of election of vacant posts.

The State Election Commission would not convene such meeting till the election of remaining territorial constituencies are over. However, in the meantime, it is apprehended by the petitioner that taking shelter of 40(1)(c) of the Act, the Senior most members of the Territorial Electoral Constituencies of Panchayat Samiti would start acting as a Pramukh after the oath having been administered upon the members. He may thereafter, convene a meeting for taking policy decision and decision in financial matters also. In my view, since it has not been contended on behalf of the petitioner that such decision has already been taken or meeting has already been held, the writ petition would be pre-mature for that purpose. However, I must also hold that the Provision under Section 40 (1)(C) of the Act has been included by the legislature in its wisdom to address such type of emergent situation. If the statute empowers a person, who is senior most member of the Panchayat Samiti to act as Pramukh till Panchayat Samittee is able to elect a Pramukh in accordance with law as an interim arrangement, this Court cannot prevent such person from acting as such.

So far as the subscription of oath is concerned, the State

Election Commission would have no occasion for not subscribing oath upon the elected candidates. The democratic process cannot be stalled or obstruct. However, if in case, such Pramukh is nominated and he convenes such a meeting and takes any decision without jurisdiction or illegally, it would be open for the concerned to challenge the same before the competent Forum.

Accordingly, I do not find any reason warranting interference in the matter and, as such, the writ application stands dismissed.

However, before parting with the issue, I must indicate that if the elections have been cancelled or countermanded on certain technical grounds and the Single Judge Bench of this Court has directed the Election Commission to remove the difficulty, then, as soon as possible, steps for removal of such technical defects should be taken and such election should be held at the earliest possible date by the State Election Commission.

(Dr. Ravi Ranjan, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21/09/2016
Transmission Date	N/A