

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1142 of 2016

=====

Mustufa, son of Md. Jalil, resident of village Sirniyan, West Bilaspur, P.O. and P.S. Hayaghat, District Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna.
2. The Collector-cum-District Election Officer, Panchayat, Darbhanga.
3. The Block Development Officer, Hayaghat cum- Assistant Election Officer, Panchayat, Hayaghat, Darbhanga.
4. The State Election Commission, 3rd Floor, Sone Bhavan, Birchand Patel Path, Patna.
5. The Commissioner State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Kaushalesh Choudhary, Advocate.
Mr. Shambhu Nath Jha, Advocate

For the Respondent/s : Mr. Amit Shrivastava, Advocate.
Mr. Girish Pandey, Advocate.
Mr. Gautam Kumar Yadav, A.C. to G.P. 26

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 28-11-2016

Heard learned counsel for the parties.

2. The order dated 5th of May, 2016 passed by the learned Single Bench of this Court in C.W.J.C. No. 8012 of 2016 is subject matter of challenge in the present Letters Patent Appeal by which the writ application was dismissed.

3. The appellant has sought a writ of mandamus commanding the respondents to accept the Nomination Paper filed by



the appellant for contest to the election for the post of Mukhiya of Gram Panchayat Raj Sirnian, West Bilashpur, Hayaghat, Darbhanga.

4. The writ application has been dismissed on the ground that the proposer of the appellant was less than 21 years and, thus, not qualified under Rule 39(1)(a) of the Bihar Panchayat Election Rules, 2006 to be a valid proposer. The argument of Learned Counsel for the appellant is that he had no information about rejection of the nomination paper and that he had no information of the scrutiny of the nomination papers. He contends that it was the duty of the Election Officers to get the mistake rectified at the time of scrutiny. The appellant relies upon the directions issued by the State Election Commission on 8th of February, 2016 whereby the nomination and documents attached therewith are required to be examined at the stage of filing of the nomination itself.

5. We find such an argument to be wholly untenable as before the learned Single Bench, it was admitted that the proposer of the appellant is less than 21 years. Once the proposer of the appellant was less than 21 years, by virtue of Rule 39(1)(a) of the Rules, such proposer is not competent proposer, consequently, the nomination of the appellant has been rightly rejected. Even if there is wrongful rejection, the remedy of the candidate is by way of an Election Petition and not through the writ application.



6. We do not find that such guidelines are applicable in the facts of the present case to take into its ambit the substitution of a proposer. What is contemplated is that if the Nomination Papers do not carry signatures on the nomination papers or on affidavit, the same should be allowed to be rectified but it does not take into its ambit when the proposer is less than 21 years and, thus, not competent to propose. We find that the guidelines referred to by the learned counsel for the appellant are not applicable.

7. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.12.2016
Transmission Date	

