

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12739 of 2015

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Amal Kishore Chaudhary @ Nepali Chaudhary son of Late Bhagwat Chaudhary,
resident of village- Balha, P.O.- Balha Bazar, P.S.- Mansi, District- Khagaria

.... Petitioner/s

Versus

1. Rani Devi Wife of Sri Sunil Kumar Paswan, resident of village- Balha, P.O.- Balha Bazar, P.S.- Mansi, District- Khagaria
2. The Bihar State Election Commission, Patna
3. The District Election Officer, Khagaria
4. The Block Election Officer, Mansi, District- Khagaria
5. Sharvan Sada son of Rameshwar Sada
6. Thakur Paswan son of Late Harun Paswan
7. Sanjeev Ram son of Sri Bhagwat Ram
8. Pawan Ram son of Sri Bhagirath Ram
9. Narayan Sada son of Late Achhelal Sada
10. Smt. Manju Devi wife of Sri Lal Mohan Ram
11. Sheetal Ram son of Late Jagran Ram
12. Smt. Meera Devi wife of Amar Kishore Chaudhary
13. Most. Pancho Devi wife of Late Bhagwat Chaudhary All resident of village- Balha, P.O.- Balha Bazar, P.S.- Mansi, District- Khagaria
14. Gopal Paswan son of Late Mohan Paswan Resident of village- Balha, P.O.- Balha Bazar, P.S.- Mansi, District- Khagaria

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Abdul Manan Khan, Advocate
Mr. Anamul Haque, Advocate
For the State E.C. : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikesh, Advocate
For the Pvt. Respondent/s: Mr. Dronacharya, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-02-2016

Heard Mr. Abdul Manan Khan, learned counsel for the
petitioner, learned counsel for the State, Mr. Sanjeev Nikesh for the
State Election Commission and Mr. Dronacharya appearing for the
election petitioner.



The petitioner, a returned Ex-Mukhiya of Gram Panchayat, Balha (Mansi) in the district of Khagaria, is aggrieved by the judgment and order dated 30.7.2015 passed by the Election Tribunal-cum-Munsif, Khagaria in Election Petition No. 11 of 2011 whereby and whereunder the learned Election Tribunal has declared the election of the writ petitioner void *inter alia* on grounds of filing a false affidavit along with his nomination form insofar as it related to information regarding the pending criminal cases as well as regarding the property details.

The facts are not in dispute and are rather admitted by the documents on record. It is not in dispute that two cases were instituted against the petitioner of which one gave rise to Sessions Trial No. 238 of 2001 and the other is arising from Chautham (Mansi) P.S. Case No. 241 of 2005. In both the cases cognizance had been taken and thus in terms of Section 125 A of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') the petitioner was required to give information to such effect. It is not in dispute that in the election the petitioner returned as the Mukhiya and his election was questioned by the private respondent on the said ground of filing a false affidavit which has been upheld and the election being set aside the writ petitioner is before this Court.



I have heard learned counsel for the parties and I have perused the records. As already I have observed there is no contest that the affidavit insofar as the pendency of criminal cases is concerned, did not reflect a correct picture. Although Sessions Trial No. 238 of 2001 resulted in the acquittal of the petitioner on 27.9.2010 i.e. prior to the election but another case arising from Chautham (Mansi) P.S. Case No. 241 of 2005 in which cognizance had been taken, the petitioner answered in the negative even when he had to give this disclosure under Section 125(A) (1) (ii) of the Act. According to the complainant even the disclosure as regarding the loan taken is not correct.

Mr. Khan though argued in support of the returned candidate but could not salvage the situation regarding incorrect declaration by the returned candidate. The issue whether a filing of an incorrect affidavit and non disclosure of information regarding the criminal case as mandated under Section 125(A) would merely result in a penalty provided under sub-section (3) thereof or would result in upset of the election, was a subject matter before the Supreme Court in a case of **Krishnamoorthy vs. Sivakumar** reported in **AIR 2015 SC 1921** and the Supreme Court upon exhaustive discussion of identical provisions in consideration before the Bench has recorded

the conclusion in paragraph 86 of the judgment in the following terms:

“86. In view of the above, we would like to sum up our conclusions:

- (a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.
- (b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.
- (c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.
- (d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1) (b) of the 1951 Act.
- (e) The question whether it materially affects the election or not will not arise in a case of this nature.”

A bare reading of the conclusion drawn by the Supreme Court on an identical issue raised would confirm that the failure on the part of the petitioner to give a correct information and his filing of a false affidavit regarding the pending criminal case has brought

him within the confines of corrupt practices.

The next argument advanced by Mr. Khan is that even if the election of the petitioner is set aside but the election petitioner was not entitled to a declaration in her favour for the provisions of Section 140 of 'the Act' grants her such relief only in two conditions i.e. where the votes secured by the election petitioner is ultimately found to be higher than the returned candidate in the election case and / or the election of the returned candidate suffers from corrupt practices. According to Mr. Khan the case of the election petitioner to get a declaration from the election tribunal does not fall in either of the two categories. In my opinion, the argument advanced by Mr. Khan is only to be rejected. Section 140 of the Act vests jurisdiction in the election tribunal to grant a relief in favour of the election petitioner on two grounds; namely:

- (a) where it is ultimately found that the election petitioner has secured a majority of valid votes and / or
- (b) the election of the returned candidate is affected by corrupt practices.

That a non-disclosure in the affidavit or giving a false declaration in the affidavit has been held to be falling in the category of corrupt practices, the declaration made by the election tribunal in

favour of the election petitioner suffers from no infirmity.

For the reasons so recorded, the judgment and order dated 30.7.2015 passed by the Election Tribunal-cum-Munsif, Khagaria in Election Petition No. 11 of 2011 warrants no interference.

The writ petition is dismissed.

(Jyoti Saran, J)

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