

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1399 of 2016

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Md. Mumtaz Arfi, son of Md. Mustafa, resident of Mohalla-Naya tola, Ishanagar,
Phulwarisharif, Patna.

.... Appellant/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. Kaushar Khan son of Md. Yushuf Khan, resident of village-Ishanagar, Naya
Tola, Phulwarisharif, P.S.- Phulwarisharif, District-Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Mishra

For the Respondent/s : Mr. Rakesh Parbat, SC to 21

For the Respondent No.2 : Mr. Amit Srivastava, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE DR. JUSTICE RAVI RANJAN

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-10-2016

This Letters Patent Appeal, under Section 10 of the
Letter Patent of the Patna High Court, has been preferred against the
judgment and order, dated 18.09.2015, passed, in CWJC No.5122 of
2013, by a learned single Judge, whereby the writ petition of the writ
petitioner-respondent No.6 herein has been disposed of with certain
observations.

2. Background facts:

- (i) The appellant, who lost election of ward councilor
form Phulwarisharif Nagar Parishad, levelled
allegation against the respondent No.6 that he was

an *absconder* in Jehanabad P.S. Case No.164 of 1987.

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- (ii) By order, dated 09.01.2013, passed in Case No.34 of 2012, the State Election Commission, Bihar, came to the conclusion that respondent No.6 was not declared *absconder* by the Court nor was he convicted for six months and the petition filed by the Complainant-appellant, was accordingly disallowed.
- (iii) The State Election Commissioner, while upholding the election of respondent No.6, issued directions 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 find out as to whether Md. Kaushar Khan and Kaushar Miya are one and the same person.
- (iv) During the course⁴ of enquiry, respondent No.6 was directed to appear before the District Magistrate, Patna, who was asked to authorize a responsible Officer to hold enquiry and to submit the report. The respondent No.6 did not appear before the District Magistrate. The enquiry report

of the Additional Collector, Patna, dated 13.05.2013, shows that the matter requires further enquiry on the issue as to whether Kaushar Mian and Md. Kaushar Khan are one and the same person and had resided at Jehanabad and also declared *absconder*.

(v) The respondent no.6, Kaushar Miyan, was said to be an accused in Jehanabad P.S. Case No.164 of 1987. The Chief Judicial Magistrate, Jehanabad, while considering the dispute between the parties on 18.11.2013, had stayed the execution of warrant of arrest issued against Kaushar Mian @ Md. Kaushar Khan, son of Yusuf Khan @ Ishaak Khan. The respondent No.6 did not, therefore, remain an *absconder*.

(vi) The respondent No.6, in compliance of the order, dated 02.04.2013, passed by the writ Court, appeared before the District Magistrate, Patna, for confirmation if he is Md. Kaushar Khan and not Kaushar Khan.

3. Aggrieved by the action of the State Election Commission in not disqualifying the writ petitioner-respondent No.6, on the ground that he was an *absconder*, the present Letters Patent Appeal has been filed appellant.

4. We have heard Sri Sanjeev Kumar Mishra, learned counsel, appearing on behalf of the appellant, and Mr. Rakesh Parbat, AC to SC 21, on behalf of the State. We have also heard Mr. Amit Srivastava, learned counsel appearing on behalf of the State Election Commission.

5. Because of the fact that the learned Chief Judicial Magistrate, Jehanabad, has, admittedly, stayed the execution of warrant of arrest, respondent No.6 herein could not have been treated to be a candidate disqualified from contesting the election as an absconder. The order, therefore, upholding election of the respondent No.6 as a winning candidate, is in the facts and attending circumstances of the case, wholly in accordance with law and cannot be interfered with.

6. As this appeal is devoid of any merit, the same is dismissed.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J: I agree.

(Dr. Ravi Ranjan, J)

J.Alam/-

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