

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11043 of 2016

Rubi Devi, Wife of Sita Ram Singh, Resident of Village- Baphapur Sharma, P.S.- Lalganj, Block- Lalganj, District- Vaishali. At present ward member of Gram Panchayat Raj Sirsa Biran under Lalganj Block, District- Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar at Patna.
 2. The Commissioner, Bihar State Election Commission Sone Bhawan, Birchand Patel Marg, Patna.
 3. The District Magistrate-cum-District Election Panchayat, Vaishali, District- Vaishali.
 4. The District Panchayat Raj Officer, Vaishali, District- Vaishali.
 5. The Block Development Officer Lalganj, District- Vaishali.
 6. The Block Education Officer, Lalganj, District- Vaishali.
 7. Arun Kumar Singh, Son of Sri Satydev Singh, Resident of Village- Sirsa Biran, P.S.- Lalganj, District- Vaishali. At present Up- Mukhiya of Gram Panchayat Raj Sirsa Biran, under Block Lalganj, District- Vaishali.
 8. Smt. Karuna Devi, Wife of Awadh Kishore Singh,
 9. Jai Prakash Rawat, Son of Late Bachha Rawat,
 10. Kaushal Kishore Singh, Son of Devendra Singh,
 11. Manju Devi, Wife of Sambhu Singh,
 12. Sanyogi Devi, Wife of Devendra Sahani,
 13. Manju Devi, Wife of Suresh Paswan,
 14. Gulabiya Devi, Wife of Arjun Rai,
 15. Nandlal Ram, Son of Laxamn Ram,
 16. Sunit Devi, Wife of Gopali Sahani,
 17. Rajkumari Devi, Wife of Chanardeep Sahani,
 18. Madan Rai, Son of Ram Naresh Rai,
 19. Rinku Devi, Wife of Shivrath Das,
 20. Pankaj Sah, Son of Daroga Sah,
- Respondent Nos. 8 to 20 is ward members of Gram Panchayat Raj Sirsa Biran and Resident of Village- Sirsa Biran, under Lalganj Block of Vaishali District.
21. Malti Devi, Wife of Veer Singh, Resident of Village- Govindpur, P.S.- Lalganj, District- Vaishali
 22. Babita Devi, Wife of Sipahi Mahto, Resident of Baphapur Sharma, P.S.- Lalganj, District- Vaishali.
- Both are ward member of Gram Panchayat Raj Sirsa Biran under Lalganj Block of Vaishali District.

.... Respondents

Appearance :

For the Petitioner	:	Mr. Rajeev Ranjan, Advocate
For the State	:	Mr. Arun Kumar Bhagar, , A.C. to A.A.G. XII
For the S.E.C.	:	Mr. Amit Shrivastava,
		Mr. Sanjeev Nikesh, Advocates

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 20-09-2016

Heard parties.

Through this writ application, the petitioner seeks following reliefs:-

“I. For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent No.3 the District Magistrate-cum-District Election Officer, Vaishali to consider and decide the representation filed by the writ Petitioner and other members of Sirsa Biran Gram Panchayat under Lalganj Block of Vaishali District under section 157 of the Bihar Panchayat Raj Act 2006(as amended)

II. For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to produce the entire records of election for the post of Up-Mukhiya of Sirsa Biran Gram Panchayat under Lalganj Block of Vaishali District and after production of the same may be quashed / set aside by issuance of an appropriate writ in the nature of CERTIORARI.

III. For issuance of any other appropriate writ / writs order / orders, direction / directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

The petitioner is aggrieved by the counting of the votes in which respondent no.7 was elected as Up-Mukhiya.

Ordinarily, this Court would have disposed of the writ petition with a direction to the District Magistrate to take a decision in



accordance with law upon the application or representation filed by the petitioner but in the present case, since elections are over and Section 137 of the Bihar Panchayat Raj Act, 2006 envisages in clear terms that the election to any office of a Panchayat or a Gram Katchahry shall not be called in question except by an election petition as prescribed, this Court would have difficulty in taking such view and giving such direction. Learned counsel for the petitioner draws attention towards Section 40 sub-Section (4) by which such power has been given to the State Election Commission to determine the dispute relating to such election in accordance with such rules or procedure as prescribed with respect to Pramukh or Up-Pramukh.

Thereafter, in view of the direction of this Court proper procedure has been notified which has been published in the extraordinary official gazette on 31.08.2010. In my view, it was the will and wisdom of the legislature to induct such provision under the statute and in view of the provisions contained therein, the Single Judge Bench has given certain direction for coming with prescribed procedure which was not there earlier and as such, gazette notification has been published. In my view, lack of such provision in the statute with respect to the dispute regarding the election of Mukhiya, Up-Mukhiya or any elected office of the Panchayat, this Court would have difficulty in accepting such submission made on behalf of the

petitioner.

Accordingly, in view of the aforesaid discussion, it is not desirable to give direction for disposal of the representation/application or objection filed by the petitioner as the District Magistrate does derive any authority from the statute for resolving such dispute.

Accordingly, this writ application is dismissed.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2016
Transmission Date	NA