

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13753 of 2016

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Tej Pratap Tyagi S/o Sri Shubhash Chandra Sushil Resident of Village-
Vidyanagar, P.O.- Guria, P.S.- Jadia, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, State Election Commission, Bihar, Patna.
3. The Deputy cum District Election Officer (Panchayat), Madhepura.
4. The District Assistant Election Officer cum District Panchayat Raj Officer,
Madhepura.
5. Md. Mamun Rashid son of Late Abdul Hakim Resident of Village- Garha
Rahmanapur, P.O.- Jharkaha, P.S.- Shankarpur, District- Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Rajesh Prasad Choudhary, Advocate
For the State	:	Mr. Manish Kumar, AC to AAG 6
For the State Election Commission	:	Mr. Amit Shrivastava with Mr. Girish Pandey, Advocates
For the Pvt. Respondent	:	Mr. S. B. K. Mangalam, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-11-2016

Heard learned counsel for the parties.

2. The challenge in the present writ petition is to the order dated 20.07.2016 passed in Case No. 11 of 2016 contained in Memo No. 5966 dated 21.07.2016 by which the State Election Commissioner has imposed penalty of Rs. 500/- per day from

07.06.2016 to 04.07.2016 to be realized from the salary of the petitioner and has also recommended to the State Government for departmental proceeding.

3. The petitioner was the Returning Officer for the Panchayat Election of Maura Jharkaha, Block Shankarpur in the district of Madhepura. The election was held on 02.06.2016, after which the respondent no. 5 is said to have filed an application before the petitioner seeking 14 documents and related information with regard to the election on the same day. However, on 07.06.2016, he also filed a requisition along with appropriate fee, for obtaining the same information before the petitioner. On 08.06.2016, he moved before the State Election Commission alleging that the information which he had sought on 02.06.2016 and were to be provided to him latest by 07.06.2016 in terms of Rule 113(a) of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as the 'Rules') had not been provided and, thus, to take action against the petitioner, who was the Returning Officer. The petitioner was noticed and, upon hearing, the order impugned dated 20.07.2016 has been passed.

4. Learned counsel for the petitioner submitted that the time taken for providing the documents were not in terms of Rule 113 (a) of the Rules. Learned counsel submitted that on 07.06.2016 itself the petitioner had written to the District Election Officer (Panchayat),



Madhepura informing him of the request of the petitioner and had asked for guidelines. It was submitted that on 10.06.2016 the District Deputy Election Officer (Panchayat), Madhepura wrote to the petitioner to provide the required information in terms of the guidelines of the State Election Commission dated 25.05.2016 and 09.09.2016. Learned counsel submitted that the respondent no. 5 was also informed by letter dated 10.06.2016 for coming to his Chamber personally for taking the attested photocopy of some of the documents. It was submitted that when he failed to turn up, the said information was sent to him by Speed Post on 14.06.2016. Learned counsel submitted that the petitioner again wrote on 10.06.2016 to the District Deputy Election Officer (Panchayat), Madhepura requesting to depute somebody before whom the sealed trunk could be opened for providing the information sought by the respondent no. 5. It was submitted that on 13.06.2016, the petitioner again wrote to the District Panchayat Raj Officer, Madhepura informing him with regard to the steps taken by him for providing information and further that after deputation of an officer and opening of the sealed trunk, copies of documents therein would be given to the respondent no. 5. Learned counsel submitted that a letter was written to the respondent no. 5 by the petitioner on 15.06.2016 informing him that the information sought by him had been sent by Speed Post on 14.06.2016 and the



attested copy of Form 20 (1) would be given to him once the seal of the box in which original form was kept is opened. Learned counsel drew the attention of the Court to another letter written to the District Deputy Election Officer (Panchayat)-cum- District Panchayat Raj Officer, Madhepura dated 15.06.2016, requesting him to depute a district level officer before whom the steel trunk in question could be opened. Learned counsel submitted that an officer was finally deputed on 17.06.2016 and thereafter the required attested copy of the documents were provided to the respondent no. 5 on 18.06.2016. Learned counsel submitted that as far as providing of video recording, the same was given to respondent no. 5 more than once and on the plea that he had to check the contents, he had not given any receipt. Learned counsel pointed out that after that the petitioner again received letter from the respondent no. 5 that the C.C.T.V. footage provided was not clear. Learned counsel submitted that the admission by the respondent no. 5 that he filed the requisition along the fee on 07.06.2016 clearly indicates that on 02.06.2016 there was no representation and even if it is assumed that the representation was there, the Rule stipulates that the application shall be in the prescribed manner. He took a categorical stand that the respondent no. 5 had in fact not filed any such application on 02.06.2016. Learned counsel submitted that from the above sequence it is apparent that the



petitioner had no deliberate or wilful intent not to provide such information as at the very first instance, copies of all documents which were available with him, were provided to the respondent no. 5 and with regard to the remaining, since they were in a sealed steel box, the petitioner, in order to prevent any controversy, had requested the District Deputy Election Officer (Panchayat) as well as the District Election Officer (Panchayat) for deputing an officer of the district level, in whose presence the seal of the box could be opened and information, as sought by the respondent no. 5, provided to him. Learned counsel submitted that the petitioner having discharged the duty of a Returning Officer for the Panchayat Election for the first time in his career, acted in a manner which may not be strictly in accordance with the statutory provisions but the same was under misconception rather than with the intention of violating any provision or resisting providing of any information which had been sought. Learned counsel further submitted that there is no consideration of the points raised on behalf of the petitioner in the impugned order and, thus, on that ground alone the order deserves to be interfered with. Learned counsel also drew the attention of the Court to an application of the respondent no. 5 on 06.06.2016 addressed to the District Magistrate-cum-District Election Officer, Madhepura asking him to seal all the materials concerning the said

election.

5. Learned counsel for the State Election Commission defended the order impugned and submitted that the conduct of the petitioner discloses scant respect for the statutory provisions as the defence is that he sought guidelines from the District Election Officer and also requested him for deputing a person to open the sealed trunk, so as to provide copies of the required documents to the respondent no. 5, which cannot be accepted. He further submitted that the plea of the petitioner that there was no requisition by the respondent no. 5 on 02.06.2016 stands falsified by his own communication dated 10.06.2016 contained in Memo No. 689-2 in which, at the very beginning, the subject referred to is the application of the respondent no. 5 dated 02.06.2016, and in the entire contents of the letter there is no denial with regard to there being no such application on that date by the respondent no. 5. Learned counsel submitted that it is an admitted position that Form 20 (1) was not one of the documents which was required to be sealed and even if the same had been done, it was by the petitioner himself and, thus, there was no impediment for him to unseal the same, and if required, again seal it, after getting copies of the documents. It was further submitted that the petitioner could even have got the seal opened by getting the entire exercise videographed in the presence of other officers available, but he had to



comply strictly with the statutory provisions, moreso, when he was made aware of there being a complaint to the State Election Commission against him for taking action in terms of Rule 113(a) of the Rules. Learned counsel submitted that the petitioner having been informed of the statutory duty cast upon him to provide information as well as the complaint against him for such non-performance before the State Election Commission, and still insisting for guidelines from the District Election Officer (Panchayat) as also for deputing a person in whose presence the box would be unsealed, is also indicative of the attitude of the petitioner inasmuch as, instead of being guided by the statutory obligation cast upon him in the discharge of his function as a Returning Officer, he has given premium to his subordinate hierarchy under the District Election Officer who is the District Magistrate. It was submitted that such conduct also reflects a casual approach, where basically the defence is that due to non-cooperation by other district officials, there was delay in providing information and also that the delay was not of much consequence. He submitted that perusal of the impugned order shows that all the documents which the petitioner had filed in his defence, have been referred and considered. Learned counsel submitted that the order passed is on the basis of materials on record and in terms of the provisions of the Rules, without any bias. Learned counsel further submitted that the State



Election Commission would have failed in its duty if it had refrained from taking action in terms of Rule 113(a) of the Rules and, thus, the order does not suffer from any infirmity warranting judicial interference. Learned counsel submitted that the so-called application by the respondent no. 5 for sealing all materials, was forwarded to the petitioner only on 07.06.2016 whereas the application was already with him on 02.06.2016, and further, even the application which was endorsed to the petitioner only asked for his opinion, without any direction whether to seal or not and, further that only on 10.06.2016, the petitioner had replied to the District Deputy Election Officer (Panchayat), Madhepura clearly stating that on 10.06.2016, he had sealed only those documents which were required to be sealed, and thus, the plea taken that the documents asked had been sealed is untenable, for they were not required to be sealed, which establishes that there was a deliberate attempt either to delay or not to provide information.

6. Learned counsel for the State and learned counsel for the respondent no. 5 adopt the arguments of learned counsel for the State Election Commission.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the issue has to be considered with reference to the extent, import and spirit of Rule

113 (a) of the Rules, which is quoted hereinbelow for ready reference:

“113(a). Information or Certified Copy of documents for filling election petitions to be made available within time frame.-(1) If a person files application in the prescribed manner for obtaining a copy of the election result or any other information or paper related to the election for the purpose for filling an election petition or for other purposes, it shall be incumbent on the part of Returning Officer to make available the required information/papers to the applicant within a maximum period of five days from the day of filing of such an application. If the applicant does not turn up to receive the information or the certified copy on the fixed date, the matter will be reported to the District Election Officer (Panchayat) on the same day.

(2) If the concerned Returning Officer fails to furnish the required information or to handover the certified copy without any reasonable cause within the prescribed period or denied and/or obstructed the request for information with mala fide intent in any manner, the State Election Commission, on receiving a complaint in this regard and after giving any oral or written direction to submit an explanation for the failure to do so, may impose a fine of rupees five hundred per day for delay, till the period the requisite information or the certified copy of the same is made available to the applicant. The fine shall be realized from the personal salary or emoluments of the concerned Returning Officer in the manner as specified by the State Election Commission:

Provided that the concerned Returning officer shall be given a reasonable opportunity of being heard by the State Election Commission before any penalty is imposed on him:

Provided further that the “burden of proof” that he acted reasonably and diligently shall be on the concerned Returning Officer.

(3) Where the State Election Commission at the time of deciding is of the opinion that the Returning Officer, without any reasonable cause, failed to furnish the information or the certified copy of the same within the specified time or denied the request with mala fide intent, the State Election Commission shall also recommend for disciplinary action against the Returning Officer under the service rules applicable to him.”

The Rule clearly stipulates, in mandatory terms, that the



information sought shall be provided within five days, failing which the State Election Commission, on receiving a complaint and after giving any oral or written direction to submit an explanation, may impose fine of Rs. 500/- per day for delay, till the period the requisite information or the certified copy of the same is made available to the applicant and shall also recommend for disciplinary action against the Returning Officer under the service rules applicable to him. However, the Rule also provides that such action be taken if the incumbent, without any reasonable cause, has failed to discharge his duty as per the said Rule, which has been further clarified by the second proviso that the 'burden of proof' that he acted reasonably and diligently shall be on the concerned Returning Officer, i.e., the petitioner. The Court cannot shut its eyes to the importance of the said Rule as it is in the form of a check on any unnecessary inference or manipulation by the officers in the election process, which has to be sacrosanct, especially in a democratic country like India where the people are the masters, and their will has to be truthfully and faithfully reflected in the result, and the officer of the State, who merely has to facilitate the election, cannot be permitted to manipulate, tamper, interfere or tinker with the process. Once Rule 113 (a) of the Rules, in clear terms, prescribes a fixed period for providing information, the authority which has to provide the same, is



under legal obligation to discharge such responsibility and the same is not subject to any control of any authority which may be higher to him in the service hierarchy. This is one aspect of the matter. The other equally important aspect is the fact, that in this particular case, the conduct of the officer reiterating his request for deputing an officer to the District Magistrate on 15.06.2016 and also noting the fact that there was already a complaint against him before the State Election Commission, in which the next date had been fixed for 24.06.2016, clearly indicates that he was not bothered about the consequences flowing from Rule 113(a) of the Rules and was more concerned with following the procedure which he thought to be proper, that is, of asking his superiors to send guidelines and depute a person for the purposes of getting the seal opened, which clearly indicates that he was either trying to shift responsibility or delaying giving copies of documents asked for. Either way, the end result is that statutory provisions have been blatantly flouted, and thus, the ‘burden of proof’ does not seem to have been satisfactorily explained so as to give a clean-chit to the petitioner and hold that he acted *bona fide*. Perusal of the impugned order also indicates that the matter has been well considered which, in the opinion of the Court, cannot be held to be perverse or without proper application of mind.

8. In view of the aforesaid, the Court does not find any

error in the order impugned which may warrant interference and, accordingly, the writ petition stands dismissed.

9. Having dismissed the writ petition, the Court would like to add a note of caution. The petitioner being subjected to a disciplinary proceeding in terms of the order, shall have full opportunity to explain his conduct and prove his innocence in the departmental proceeding, which shall not be prejudiced by any of the observations or findings in the impugned order or even in the present order, for such discussions made in this order are only for the purposes of deciding the present writ application and shall not be taken as a finding against the petitioner in the departmental proceeding, where the matter shall be considered on its own merits in accordance with law.

(Ahsanuddin Amanullah, J)

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