

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11298 of 2016**

=====

Kiran Devi Wife of Sri Mohan Prasad Resident of Village and P.O. Rani Sarai, P.S. Bakhtiyarpur, District - Patna Present Mukhiya of Gram Panchayat Raj, Karnauti Under Bakhtiyarpur Block, District Patna

.... .... Petitioner

Versus

1. The State Election Commission ( Panchayat ) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar through the District Magistrate -Cum-District Election Officer (Panchayat) Patna District Patna.
5. The District Magistrate -Cum-District Election Officer (Panchayat) Patna District Patna.
6. The Block Development Officer, Bakhtiyarpur, District Patna.
7. Smt. Neelam Devi Wife of Sakaldeep Pandit Resident of Village and P.O. Karnauti, P.S. Bakhtiyarpur, District – Patna
8. Anupurna Devi wife of Rajendra Saw,
9. Archana Kumari wife of Mahesh Sharma,
10. Kamli Devi wife of Paras Saw,
11. Mina Devi wife of Arjun Prasad,
12. Radha Devi wife of Ashok Sao,
13. Rita Devi wife of Dinesh Sao,

All residents of village Karnauti, P.S. Bakhtiyarpur, District Patna,

14. Asha Devi wife of Jitendra Prasad,
15. Nirmala Devi wife of Birmant Sao,
16. Priyanka Kumari wife of Munna Kumar,
17. Rani Devi wife of Sudhir Kumar,

All residents of village Ranisara, P.S. Bakhtiyarpur, District Patna,

18. Kanti Devi wife of Nawal Thakur, resident of village Badki Mahammadpur, P.O. Sabnima, P.S. Bakhtiyarpur, District Patna,
19. Ratna Sharma wife of Satish Kumar Sharma, resident of village Mirdahachak, P.S. Bakhtiyarpur, District Patna,
20. Soni Kumari wife of Mantu Chandrabansi, resident of villalge Naya Tola Mohammadpur, P.O. Sabnima, P.S. Bakhtiyarpur, District Patna,

.... .... Respondents

=====

**Appearance :**

For the Petitioner : Mr. S.B.K. Mangalam and  
Ms Anita Kumari, Advocates

For the State Election Commission: Mr. Amit Shrivastava and  
Mr. Girish Pandey, Advocates

For the Private Respondent: Mr. Rajendra Narain, Sr. Advocate  
Mrs. Anju Narain, Advocate

=====

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**Date: 29-07-2016**

Heard learned counsel for the petitioner and the State.

Through this writ application, the petitioner seeks quashing of the letter dated 29.06.2016 issued by the Munsif, Barh, addressed to the respondent no. 6, a copy of which has been appended as Annexure 3, intimating the Block Development Officer Bakhtiyarpur that an order has already been passed in Election Petition Case No. 22 of 2016 to maintain *status quo* not to administer oath to the winning candidate, i.e., the petitioner on the post of Mukhiya of Karnauti Gram Panchayat under Bakhtiyarpur Block.

The election petitioner, who has been impleaded as respondent no. 7, has appeared through Vakalatnama.

The petitioner has brought on record the order impugned also appended as Annexure 7 to the supplementary affidavit. He has stated that though the requisition was filed for supply of certified copy of the order of injunction passed in Election Petition Case No. 22 of 2016 but since it was not supplied it could not be brought on record. Though the petitioner had not sought quashing of the order impugned in express terms vide relief no. 1(II), he has sought declaration that while trying Election Petition the Tribunal concerned created under the Special Statute has no jurisdiction to invoke his powers under the Code of Civil Procedure to pass an order of injunction restraining the authorities from administration of oath to elected representatives and

he has also sought quashing of the consequential letter which was issued by the Munsif, Barh himself intimating the Block Development Officer concerned that such restraintment order has been passed by him and directing him not to administer oath upon the concerned person.

Identical issues, as involved in the case, have elaborately been considered and decided in C.W.J.C. No. 10661 of 2016(Mamta Devi v. The State of Bihar and others) on 28.07.2016.

In the election petition it has been alleged that at the time of counting of votes irregularities and bunglings have been committed by the Returning Officer.

In the present case also, the court concerned has recorded that considering the nature and gravity of the allegation supported by the affidavit sworn by the election petitioner and presuming the submission made by her to be true, it was of the opinion that prima facie case is made out and, therefore, it proceeded to pass order of maintaining *status quo*.

In my view, such order could not have been passed by the court concerned for the reasons detailed in C.W.J.C. No. 10661 of 2016(Mamta Devi v. The State of Bihar and others).

Accordingly, this writ application also stands allowed in terms of the judgment dated 28.07.2016 passed in C.W.J.C. No. 10661 of 2016(Mamta Devi v. The State of Bihar and others) and the

impugned order dated 28.06.2016 passed in Election Petition No. 22 of 2016 as contained in Annexure 7 and the letter dated 29.06.2016 as contained in Annexure 3 are quashed and set aside.

The authority concerned would proceed to conclude the democratic process by administering oath upon the winning candidate. However, the court concerned, which is in seisin of the Election Case, would be at liberty to proceed and bring it to its logical conclusion on its own merit and in accordance with law.

However, before parting with the issue, this Court requires an explanation from the Judicial Officer concerned as to under what authority he had proceeded, after passing an order, to personally write a letter to the Block Development Officer, Bakhtiyarpur, a copy of which has been annexed as Annexure 3, so that it reaches this Court within a period of four weeks.

Put up this case after four weeks.

**(Dr. Ravi Ranjan, J)**

SC/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 22.08.2016 |
| Transmission Date | NA         |