

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7350 of 2016

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Ranju Kumari, Wife of Pawan Kumar Choudhary, Resident of Village- Sirajpur,
Police Station- Parbatta, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Election Commissioner, State Election Commission, Bihar, Patna.
2. The State Election Commission, represented through the Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd Veer Chand Patel Marg, Patna-800001.
3. The Principal Secretary, Department of Panchayati Raj, Bihar, Patna.
4. The District Magistrate -cum- District Election Officer, Khagaria.
5. The Sub-Divisional Officer, Gogari -cum- Senior Incharge Officer, Parbatta, Khagaria.
6. The Block Development Officer, Parbatta, Khagaria -cum- Returning Officer.
7. Rajiv Choudhary, son of Jitendra Choudhary, resident of Village- Sirajpur, Post office- Temtha, Police Station- Parbatta, District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Singh
For the Respondent/s	:	Mr. Raju Giri, GP-30
For the Respondent-SEC	:	Mr. Amit Shrivastava
		Mr. Sanjeev Nikesh
For the Respondent No.7	:	Mr. S.B.K. Manglam

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-05-2016

Learned counsel for the petitioner is permitted to correct the serial number of the respondent.

The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order bearing letter no.831 dated 4.4.2016 of the Election Officer (Panchayat) -cum- Block Development Officer, Parbatta, District- Khagaria, whereby the petitioner has been held disqualified under rule 39(1) (b) of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as

‘the Rules’) framed under the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as ‘the Act’) and consequently the nomination form has been rejected.

I have heard Mr. Ranjan Kumar Singh, learned counsel appearing for the petitioner, Mr. Raju Giri, learned Government Pleader No.30 for the State, Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, learned counsel appearing for the State Election Commission and Mr. S.B.K. Manglam, learned counsel appearing for the private respondent no.7.

The facts of the case is in a very narrow compass. The petitioner filed her nomination for the post of Mukhiya, Gram Panchayat, Temtha Karari, Block Parbatta in the district of Khagaria on 31.3.2016 as is manifest from the details enclosed with Annexure-2 wherein the name of the petitioner appears at serial no.6. The proposer of the petitioner is one Deepankar Kumar, son of Kapildeo Prasad, resident of Shrirampur Tuthi. There are other applicants for the post including the private respondent no.7 whose name appears at serial no.1 and one Manindra Choudhary whose name appears at serial no.10. Whereas the proposer of the petitioner is Deepankar Kumar as is manifest from page 35 of the proceeding, the proposer of applicant no.10 Manindra Choudhary is Deepak Kumar, as manifest from page 37. The name of the proposer of the petitioner appears at serial no.95 and in so far as the proposer of



contestant Manindra Choudhary, namely, Deepak Kumar is concerned his name appears at serial no.98 of the voter-list. A fresh copy of the voter list has been placed on record by the petitioner along with the reply to the counter affidavit of private respondent no.7.

A complaint was filed by the private respondent alleging that Deepankar Kumar and Deepak Kumar are one and the same person and since under rule 39 (1) (b) of 'the Rules' a proposer cannot act as such for two applicants hence the nominations be rejected. The complaint made by the private respondent on enquiry has been upheld leading to the cancellation of nomination of the petitioner vide order passed on 4.4.2016 impugned at Annexure-1. For the same reason even the nomination of Manindra Choudhary was cancelled.

While it is the contention of Mr. Ranjan Kumar Singh, learned counsel appearing for the petitioner that Deepankar Kumar and Deepak Kumar are two distinct personalities and are not the same person and even if it be as such, it cannot disqualify the petitioner's nomination, such argument has been contested by the State Counsel as well as Mr. Manglam, learned counsel appearing for the private respondent, who submit that since both the proposers, is the same person, hence the rejection is valid.

An exhaustive counter affidavit has been filed by the



State and while discussing the provision of Rule 39 (1) of 'the Rules' the allegation made in the complaint has been reiterated. It is stated that an FIR has also been instituted against the proposer on the allegation giving rise to Parbatta P.S. case No. 67 of 2016. According to Mr. Giri, learned State Counsel, the proposer of both the petitioner and Manindra Choudhary is the same person and for which he refers to the document enclosed to the counter affidavit.

A counter affidavit has also been filed by the private respondent again relying upon the provision of Rule 39 of 'the Rules' to submit that since it is the same person who is the proposer for two candidates including the petitioner hence both the nominations have been rightly rejected on enquiry. Mr. S.B.K. Manglam, learned counsel appearing for the private respondent while supporting the reason behind cancellation has also argued on the scope of interference by a writ court in election matters to submit that once a nomination has been rejected on enquiry by the Returning Officer, then its challenge can only be made by raising an election dispute under section 139(1) (c) of 'the Act' and not by way of a writ petition. Learned counsel has relied upon the following judgments of the Supreme Court in support of his submission:

- (1) **AIR 1952 SC 64 (N.P. Ponnuswami vs. The Returning Officer, Namakkal;**

(2) (1976) 3 SCC 211 (Nanhoo Mal vs. Hira Mal)

paragraph 5;

(3) AIR 1987 SC 1926 (Samar Singh vs. Kedar Nath),

paragraph 12;

(4) (2004) 7 SCC 492 (Manda Jaganath vs. K.S.

Rathnam), paragraphs 12 to 18

On the strength of these judgments it has been the argument of Mr. Manglam that the lawful recourse for the petitioner in these disputed circumstances would be through an election petition but a writ remedy is not a lawful recourse.

Responding to the argument advanced by the learned counsel for the State and the private respondent it was argued by Mr. Singh, learned counsel appearing for the petitioner that the objection is stage managed. It is submitted by Mr. Singh that whereas the petitioner has filed her nomination on 31.3.2016, with her proposer being Deepankar Kumar, the said Manindra Choudhary filed his nomination on 2.4.2016 with his proposer as Deepak Kumar. According to Mr. Singh, even if the complaint is accepted on its face value yet it is the nomination of Manindra Choudhary which needs to be disqualified under rule 39 (1) (b) of 'the Rules' and not the petitioner. According to Mr. Singh, it is a collusive effort of the private respondent along Manindra Choudhary and her proposer, to disqualify her from the contest by

adopting wrongful means and the Returning Officer has mechanically played into their hands.

I have heard learned counsel for the parties and I have perused the records. In my opinion two issues fall for consideration, namely:

- (a) Whether the grievance raised by the petitioner can be examined in the writ jurisdiction in the backdrop of the judicial pronouncements so relied upon by Mr. Manglam; and
- (b) Whether even if the complaint is upheld on its face value, the nomination of the petitioner could have been rejected under rule 39(1)(b) of 'the Rules'

The legal position canvassed by Mr. Manglam cannot be contested and the jurisdiction of a writ court under Article 226 of the Constitution of India in matters of rejection of nomination is rather circumscribed and unless there are exceptional circumstances existing, ordinarily a writ court would not enter into such dispute which requires appreciation and weighing of evidence and in such cases the adjudication is best left under the election laws. While the settled legal opinion on rejection of nomination in disputable circumstances is that it should be raised by way of election dispute such legal principles is not free from exceptions. In fact there may be instances where the exercise of statutory power by the Returning



Officer is mechanical, arbitrary and reflective of abuse. Now in such cases where the action speaks for itself and does not require any evidentiary support then in such cases the aggrieved need not be relegated to an election dispute for there is no lawful dispute at all rather a dispute is deliberately and mischievously sought to be created when there exists none.

A somewhat similar issue came up for consideration before a Division Bench of this Court in the case reported in **2010 (3) PLJR 578 (N.S. Madhavan vs. Shyamdeo Prasad)** and the Division Bench of this Court upon examination of the judicial pronouncements on the issue including the judgment of the Supreme Court rendered in the case of **N.P. Ponnuswami** (supra) while upholding the settled position that in normal circumstances a rejection of nomination can only be questioned by way of an election dispute after the election is over, has proceeded to hold that in exceptional circumstances, a writ court is not precluded to exercise its extraordinary jurisdiction specially where the rejection of nomination is an abuse of statutory powers.

In the said case the writ petitioner had filed his nomination for the post of Chairman of the Cooperative Society. The scrutiny was done and in which nomination of the writ petitioner was rejected on grounds that he has dues payable. Before the learned Single Judge, the petitioner canvassed that a no dues



certificate had earlier been issued by the Assistant Manager which he filed with the nomination papers but subsequently a second certificate was issued on 1.2.2009 in which it was mentioned that Rs.5,000/- was due against him and which led to the rejection of nomination. The learned Single Judge while overruling the objections raised by the election authorities regarding the statutory forum available to an aggrieved candidate against the rejection of nomination, held the rejection invalid, upheld the nomination of the petitioner as valid and directed the Election authorities for holding the election accordingly. The State Election Commission through its Commissioner moved in intra court appeal before the Division Bench and the Division Bench after examining the law on the issue concluded in paragraphs 20 and 21 as follows:

“20. ...As is luminescent from the decisions in the field and the provisions contained in the 2008 Act and the Rules framed thereunder, an election has to be called in question by filing an election petition. Thus, there is a statutory bar and there is only one remedy. **The issue of rejection or acceptance of the nomination paper can be raised in an election dispute. However, when there are exceptional circumstances the writ court would not refuse to entertain the writ.** If such circumstances exist, the alternative remedy can be by-passed. **For taking the path of departure, there should be circumstances which would justify the same.”**

21. The question that emanates in the case at hand whether the order passed by the learned Single Judge can be treated to be one founded on the base of an exceptional circumstance. On a scrutiny of the order of the learned Single Judge it is evident that the writ petitioner was given a “No Dues Certificate’ by the Assistant Manager, Magadh Central Co-operative



Bank, Gaya on 25.9.2009. The same authority before expiry of two days issued another certificate in which it was stated that a certain sum was due. It is worth noting the said certificate was filed by one Satyendra Singh before the Returning Officer. The petitioner was asked to clarify the position. The Returning Officer also asked the District Co-operative Officer to enquire into the matter with regard to issue of the 'No Due Certificate'. On 5.10.2009, on an enquiry a certificate was granted by the Managing Director, Magadh Central Co-operative Bank, Gaya to the District Co-operative Officer clearly stating therein that there was no due as against the writ petitioner. It is also interesting to note that all the nomination papers were rejected. As is evincible, the Returning Officer, for reasons best known to him, did not give weightage to the certificate issued by the Managing Director. **When the authority had directed an enquiry and the maze was clear there was no reason to reject the nomination paper. On the contrary, the second certificate that was given at the instance of another is an erroneous one.** Two aspects need to be highlighted. **An incorrect certificate was issued to debar the petitioner from contesting the election, and further all the nomination papers were rejected. This tantamounts to total abuse of exercise of power vested in a statutory authority.**

..... When a statutory authority acts in such a manner, it can be said with certitude that the doctrine of abuse of the process of law comes into play. In fact, it would not be an exaggeration to say it creates a concavity in the system which is governed by 'Rule of Law'. When the exercise of power is in total disregard of all canons of justice and violative of acceptable norms and manifestly exposes clear abuse of the process of law, a writ court cannot ignore it.

.....”

 (Emphasis is supplied by me)

In view of the express opinion of the Division Bench on the scope of interference in an order of rejection of nomination, by a writ court, the argument advanced by Mr. Manglam to question

the writ petition and the relief prayed herein on its maintainability, has to be tested against the backdrop whether the case in hand falls within the category of exceptional circumstances or it involves disputed issues necessitating an adjudication by way of an election dispute.

Annexure 1 to the writ petition is the rejection order and disqualifies the petitioner under rule 39(1) (b) of ‘the Rules’ which is the foundation for rejection of the nomination.

Rule 39(1) (b) of ‘the Rules’ reads as follows:

“39. Presentation of nomination paper.- (1) On or before the date appointed under clause (a) of rule 36, each candidate shall in person, within the time and the place appointed in the notice under rule 36, deliver to the Returning Officer or the Assistant Returning Officer authorized for this purpose by the Returning Officer, a nomination paper duly filled in Form-6 and subscribed by the candidate and a voter of the concerned constituency as his proposer;

Provided that a person, who is subject to any disqualification as a voter under the Act shall not be eligible to subscribe to any nomination paper as a proposer,

(a) Any person, who is enrolled in the voter list of the concerned territorial constituency and who not being disqualified under sub- section (1) of section 136 of the Act, may be a proposer of nomination;

(b) A person can not be a proposer for more than one candidate;

(c) ”

Another provision which would be relevant for the purpose will be rule 41(2) (b) which reads as follows:

“41. Scrutiny of Nomination Paper.-

(1)

(2) The Returning Officer shall examine the nomination papers and may reject them on the following grounds:

- (a)
- (b) If the proposer is not qualified for subscribing to the nomination paper.”

The rejection of the nomination is by taking recourse to rule 39(1) (b) of ‘the Rules’ which inter alia provides that a person cannot be proposer for more than one candidate. Although Mr. Manglam has argued that a disqualification of a proposer under section 136(1) of ‘the Act’ would equally disqualify him from becoming a proposer to any candidate but then there is no such case canvassed herein rather it is a matter of record that rejection is under rule 39(1) (b) of ‘the Rules’. As can be seen rule 41 provides scrutiny of nomination paper requiring an election candidate, his election agent as well as the proposer to remain present at the time of scrutiny and in case the Returning Officer on examination of the nomination papers is satisfied that the proposer is not qualified for subscribing to the nomination paper then the nomination has to be rejected.

Although the counter affidavit filed on behalf of the State also encloses the photographs of the petitioner and said Manindra Choudhary filing their respective nomination at Annexure-‘E’ series in presence of the Returning Officer but he has recorded no objection on the qualification of the proposer. Whereas



the petitioner filed her nomination on 31.3.2016 as is manifest from page 34 with her proposer being Deepankar Kumar whose name appears at serial no.95 of the voter-list, the said Manindra Choudhary filed his nomination on 2.4.2016 with his proposer being Deepak Kumar whose name appears at serial no.98 of the voter list. It is rather surprising that on 2.4.2016 itself when the said Deepak Kumar proceeds to become a proposer for Manindra Choudhary he also swears an affidavit on the same date i.e. 2.4.2016 admitting that the person Deepankar Kumar and Deepak Kumar appearing at serial nos. 95 and 98 respectively of the voter list, is the same person, a copy of which is enclosed at Annexure 'D' to the counter affidavit of the State. What is even more surprising is that it is this affidavit of Deepak Kumar which has been enclosed by the private respondent in his complaint filed on 4.4.2016 before the Returning Officer present at Annexure 'C' to the counter affidavit of the State. Although Mr. Giri, learned State Counsel and Mr. Manglam, learned counsel appearing for the private respondent have laboured hard to submit that since Deepak Kumar and Deepankar Kumar are one and the same person hence the nomination of the candidate(s) for whom he has acted as proposer are liable to be cancelled under rule 39(1) (b) of 'the Rules' but in my opinion the argument advanced by learned counsel for the State and the private respondent is fallacious and contrary to



the statutory provisions. The provisions of rule 39 (1) (b) of 'the Rules' is self eloquent and all that it prescribes is that a person cannot be a proposer for more than one candidate. Meaning thereby once Deepankar Kumar had become a proposer for the petitioner, he could not have become a proposer of Manindra Choudhary by his alias name Deepak Kumar. The provisions of 'the Act' and 'the Rules' framed thereunder nowhere prescribes that in circumstances so existing the candidature of all the candidates have to be disqualified rather the provision is self explicit and merely proceeds to disqualify the nomination of such candidate for whom any person has become a proposer after having already stood as a proposer for another candidate whose nomination has been accepted. Law is clear and it is the proposer who cannot be permitted to stand as such for another candidate. There is a further check provided under rule 41 of 'the Rules' at the time of scrutiny and in fact even if the affidavit of said Deepak Kumar present at Annexure "D" is to be believed and it is accepted on its face value that Deepak Kumar and Deepankar Kumar are one and the same person, yet it is the nomination of Manindra Choudhary which was filed on 2.4.2016 which had to be rejected on scrutiny because the said Deepak Kumar as Deepankar Kumar had already become a proposer of the petitioner in the nomination filed on 31.3.2016 much before the said Manindra Choudhary. The validity of the



nomination filed by the petitioner with her proposer as Deepankar Kumar suffered no infirmity when it was filed on 31.3.2016 and even if the said Deepankar Kumar has chosen to become proposer of Manindra Choudhary subsequently this act of Deepak Kumar @ Deepankar Kumar can only lead to disqualification of Manindra Choudhary but it certainly cannot invalidate the candidature of the petitioner, since admittedly the name of Deepankar Kumar exists at serial no.95 of the voter-list and which is not in dispute.

From the discussion aforementioned it is transparent enough to see that the petitioner has been made a victim of a collusive action and certainly her nomination suffered no infirmity to invite a disqualification under rule 39(1) (b) of 'the Rules' for on the date when the petitioner filed her nomination i.e. 31.3.2016 the said Deepankar Kumar was not a proposer to any other candidate and hence not disqualified. Further merely because his name appears at two places in the voter list by an alias name as claimed by him, also cannot be a ground for rejection of nomination of the petitioner. The order of rejection reflects a mechanical exercise by the Returning Officer which is de hors the statutory provisions.

For the reasons aforementioned the order of rejection of nomination of the petitioner passed by the Returning Officer –cum- Block Development Officer, Parbatta bearing letter no.831 dated 4.4.2016 cannot be upheld and is accordingly set aside.

The District Election Officer –cum- District Magistrate, Khagaria as well as the Returning Officer (Panchayat) –cum- Block Development Officer, Parbatta, respondent no.6 herein are directed to accept the nomination form of the petitioner and permit her to contest the election of Mukhiya.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR	
CAV DATE	
Uploading Date	07-05-2016
Transmission Date	