

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7664 of 2016

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Sita Devi, wife of Sri Rajesh Kumar Sah, resident of Village- Telihar, P.O.- Telihar
& P.S.- Beldaur, District- Khagaria (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State Election Commission, Bihar, Patna through the Secretary, Patna.
3. The District Election Officer (Panchayat) cum- District Magistrate, Khagaria.
4. The District Panchayat Raj Officer, Khagaria.
5. The Returning Officer cum Block Development Officer, Beldaur, District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Sinha
For the Respondent/s	:	Mr R.R.K. Pandey, SC-29
For the Respondent-SEC	:	Mr. Amit Shrivastava
		Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-05-2016

Heard Mr. Rajesh Sinha, learned counsel appearing for
the petitioner, Mr. R.R.K. Pandey, learned Standing Counsel No.29
for the State and Mr. Amit Shrivastava for the State Election
Commission along with Mr. Girish Pandey.

The petitioner claims to have filed her nomination for
the post of Member, Panchayat Samiti, under Block- Beldaur in the
district of Khagaria. The nomination papers were put under scrutiny
and accepted. A list was prepared under rule 43(1) 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') in Form-9 and the name of the



petitioner was mentioned in the list published for the Kanjari Territorial Constituency No.6 placed at Annexure-3. The petitioner was also allotted a symbol. Along side, a list was also published for Territorial Constituency No.8 i.e. Telihar Panchayat Samiti under Block- Beldaur in the district of Khagaria which does not bear the name of the petitioner present at Annexure-3/1. The petitioner represented before the District Magistrate, Khagaria who happens to be the District Election Officer but since no steps were taken that she filed the writ petition.

This matter was heard on 29.4.2016 and since the election is scheduled for 6.5.2016 hence the learned State Counsel was directed to ascertain the instruction. Following the direction a counter affidavit has been filed enclosing the nomination form of the petitioner at Annexures 'A' and with reference thereto it is submitted by Mr. Pandey, learned Standing Counsel No.29 that although the petitioner claims to have applied against the post of Member, Panchayat Samiti, Telihar which is Territorial Constituency no.8 but she has filed her nomination form for the post of Member, Panchayat Samiti, Kanjari which is Territorial Constituency No.6 and it is for this reason that initially her name was published under rule 43 of 'the Rules' but when it was detected that the proposer of the petitioner was a resident of Panchayat



Samiti, Telihar in Territorial Constituency no.8 and since the statutory provisions mandates that the proposer has to be a resident of the concerned Territorial Constituency which in the present case is Territorial Constituency No.6 hence the nomination was rejected, a copy of which forms part of Annexure 'C' series.

Although Mr. Sinha, learned counsel appearing for the petitioner submits that had the said discrepancy been brought to the notice of the petitioner at the relevant time i.e. 15.3.2016 itself, the error could have been rectified by filing fresh nomination form and that it is wholly on account of the fault of the Returning Officer in not pointing out this discrepancy that the petitioner is made to suffer but I am at loss to appreciate this anxiety as expressed by Mr. Sinha, learned counsel appearing on behalf of the petitioner. It is a matter of record that the petitioner applied for Territorial Constituency No.6 and was also eligible to contest but the fault lay with the proposer who is a resident of Territorial Constituency No.8. Now it is unfair to expect that the Returning Officer, who is required to examine the nomination form so filed, should have known that the petitioner is a resident of Gram Panchayat, Telihar and accordingly should have advised the petitioner.

Admittedly the nomination form was filed for Territorial Constituency No.6 which is the Kanjari Panchayat Samiti and not



for Territorial Constituency no.8 which the petitioner intended to. All that the Returning Officer was obliged to do at this stage is to examine whether the nomination form is in order and thus even though the petitioner was entitled to contest the election from Territorial Constituency no.6 as well being the resident of the block concerned but since the proposer was a resident of Territorial Constituency no.8 hence the nomination failed on this respect and was consequently rejected. The explanation so given in the counter affidavit has fruitfully explained the reasons of rejection and it is the careless, casual and inattentive approach of the petitioner herself in not filling up the nomination with all consciousness, which is the reason behind her disqualification for which she is alone to be blamed.

The writ petition is dismissed.

(Jyoti Saran, J)

SKPathak/-

NAFR	
CAV DATE	
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