

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2234 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 14556 of 2015
Along with
Interlocutory Application No.9707 of 2015

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Ramkeshwar Singh, Son of Late Bindeshwari Singh, resident of village + P.O. Sakhmohan, Pathaura, P.S. Bibhutipur, District – Samastipur.

.... Appellant/Petitioner

Versus

1. The Bihar State Election Authority through its Secretary, Patna.
2. The District Magistrate-cum-District Returning Officer, Cooperative Societies, Samastipur.
3. The District Cooperative Officer-cum-District Deputy Returning Officer, Cooperative Societies, Samastipur.
4. The Block Development Officer-cum-Returning Officer, Cooperative Societies, Block-Bibhutipur, District-Samastipur.
5. The Sakhmohan PACS Ltd., through its Secretary, Village + Post Sakhmohan, Pathaura, Station + Block - Bibhutipur, District – Samastipur.
6. Navin Kumar Singh, Chairman of Sakhmohan PACS Ltd Son of Ram Uday Singh Village + Post - Sakhmohan, Pathaura, Police Station-Bibhutipur, District – Samastipur.
7. Kamla Devi, wife of Sita Ram Singh, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
8. Ramagya Singh, son of Ram Bahadur Singh, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
9. Kapildeo Singh, son of Late Deo Kishun Singh, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
10. Mitthu Mahto, son of Late Hussail Mahto resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
11. Anil Kumar Singh, Member, son of Late Anandi Singh resident of village + Post- Sakhmohan, Pathaura, Police Station - Bibhutipur, District - Samastipur
12. Baudhu Sah, son of Late Bhuttu Sah, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
13. Sevak Paswan, son of Late Mauzi Paswan, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District – Samastipur.
14. Manju Devi, wife of Narendra Prasad Singh, resident of village + Post Sakhmohan, District – Samastipur.
15. Sudha Devi, wife of Ram Shankar Singh, resident of village + Post Sakhmohan, District – Samastipur.
16. Pano Devi, wife of Raghunandan Mahto, resident of village + Post Sakhmohan, Police Station - Bibhutipur, District – Samastipur.
17. Siya Devi, wife of Baudhu Sah, resident of village + Post Sakhmohan, Police Station - Bibhutipur, District - Samastipur
18. Ramdeo Jha, Member, Sakhmohan PACS, Son of not known to the Petitioner, resident of village + Post Sakhmohan, Pathaura, Police Station - Bibhutipur, District - Samastipur

.... Respondents

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Appearance :

For the Appellant/s	:	Mr. Chakrapani Mr. Vijay Vatsyayan, Advocates
For the Respondent/s	:	Mr. Prabhat Kumar Verma, Sr.Advocate, AAG-3 Mr. N.K.Singh, Advocate

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For the Election Authority : Mr. Mukesh Kumar, Advocate
For the Respondent No.6 : Mr. Ishwari Singh,
Mr. Surendra Kumar Mishra &
Smt. Kiran Kumari, Advocates.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-08-2016

Re.: Interlocutory Application No.9707 of 2015

The application is for condonation of delay of three days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letter Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.2234 of 2015.

The order dated 22nd September, 2015 passed by learned single Bench of this Court is subject matter of challenge in the present Letters Patent Appeal.

The appellant challenged the election of respondent no.6 in the writ petition on the ground that in the affidavit filed along with nomination form, the elected candidate has not disclosed the holding of shares and therefore, such is the ground for rejection of his nomination paper itself. The Additional Registrar exercising the powers of the Registrar dismissed the election petition. Such order was challenged by way of writ petition which remains unsuccessful, hence,

the present appeal.

The learned Single Bench dismissed the writ petition holding that the affidavit relates to disclosure of assets and liabilities but if a candidate possess only the membership share, then it will be absurdity to stretch the said declaration to construe disqualification when the membership share are possessed by these respondents, which is the basic condition to contest elections.

Learned counsel for the appellant refers to Section 12(1)(d) (iv) of the Bihar State Election Authority Act, 2008 to contend that the requirement by the Chief Election Officer as published in the manual, is non-compliance of the provisions of the orders made under the Act and therefore, non-disclosure of the assets will lead to declaration of the returned candidate to be void.

The entire argument of learned counsel for the appellant is based upon the Manual issued by the Chief Election Officer from time to time. A circular was issued on 12th May, 2009 to all the returning officers and Nodal Officers that the nomination paper would require to be filed by a candidate which includes form-A to the effect that the candidate will disclose any pending criminal cases, assets, educational qualification along with supported by an affidavit. It is thus contended that since the Election Commission has issued an order in exercise of powers conferred in terms of Bihar State Election Rules, 2008, therefore the requirement to disclose assets is a requirement under the Act and therefore, the violation of such provision will entail disqualification of a candidate.

The relevant provisions of the Act read as under:-

“4. Superintendence, Direction and Control.—(1) The Election Authority shall have power, authority and jurisdiction for exercising superintendence, direction and control of the preparation of electoral rolls for, and conduct of all elections to bodies such as Co-operative Societies, Shiksha Samiti or any other institution, organization, establishment, which may be entrusted to it by the State Government.

(2) The conditions of service other than tenure of the Chief Election Officer of the Election Authority shall be such as the State Government may be rules determine.

(3) The Government shall, when so requested by the Election Authority, make available to it such officers and staff as may be necessary for discharge of functions conferred on it under this Act.

12. Grounds for declaring election to be void.—

- (1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion-
- (a) xxxx
 - (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) xxxxx
 - (iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void.”

Learned counsel for the appellant refers to a Supreme Court judgment reported as P. V. Nrasimha Rao Versus State (CBI/SPE), 1998 (4) SCC 626 to contend that the Supreme Court has directed the Election Commission to call for information on affidavit by issuing order in exercise of its power under Article 324 of the Constitution of India which includes the declaration of the assets. It is contended that Section 4 of the

Act is *pari materia* with the Article 324 of the constitution therefore, the circular issued on 12th May, 2009 has the same force as that of the election in terms of the direction of the Supreme Court in P.V.Narsimha Rao' case (supra).

We do not find any merit in the argument raised on behalf of the appellant. The Act empowers the Chief Election Officer to conduct election of the cooperative societies. Section 4 empowers the election authority the power of superintendence, direction, control and conduct of elections. The circular issued by the Chief Election Officer is addressed to the Returning Officer or officers of the Primary Cooperative Agriculture Society but is not an order issued for the conduct of elections meant for information and compliance of the general public. The instruction in the Manual is for the conduct of elections by the returning officer and not a publication meant for general public.

When the matter came up for hearing before this Court on 29th July, 2016, learned counsel for the appellant sought time to address arguments on the question as to whether the instruction in the Manual can be called as "order" made known to the candidate, the violation of which can entail rejection of the nomination paper.

Learned counsel for the appellant relied upon the judgment in P.V.Narsimha Rao' case (supra) to contend that Circular dated 12th of May, 2009 is an order issued under the Act. The violation of which will entail the rejection of the nomination paper. We do not find that the instruction in the Manual meant for private circulation can be treated as

an order for the general public, the violation of which will entail rejection of nomination paper. The inference sought to be drawn on the basis of judgment in P.V.Narsimha Rao' case (supra) is not applicable in the present case inasmuch as the direction was given by the Supreme Court and such direction is a law within the meaning of Article 141 of the Constitution of India and meant to be applied with all persons and authority. Such direction was issued in respect of elections to the State Legislature and the Parliament. Therefore, such direction cannot be *ipso-facto* made applicable to the cooperative societies in the absence of any provision in the statute or the rules framed there under.

Learned counsel for the appellant refers to a Supreme Court judgment reported as Krishnamoorthy Versus Sivakumar and others (2015) 3 SCC 467 to contend that even in respect of Panchayat election the conditions on the lines as in P.V.Narsimha Rao' case (supra) were made applicable.

However, we do not find any merit in the said argument as well. In the said case, there was a notification issued by the Tamil Nadu State Election Commission on 01.09.2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories referred to in Para 5 of the Preamble to the Notification, at the time of filing his nomination paper. But in the present case, no notification was published for the information of general public so that candidates are apprised of the conditions of furnishing of the details of the assets while submitting the

nomination paper. In the absence of any information to the candidates, the non-disclosure of the asset in the nomination paper cannot be a ground for rejection of the nomination paper.

Still further, learned counsel for the respondent pointed out that the appellant challenged the election before the Registrar of the Cooperative Societies on the ground that in view of the declaration in the affidavit that he is not holding any share, therefore, he could not contest the election. It is, thus, sought to be inferred that non disclosure of shares is withholding of material facts. We do not find that such can be a ground for rejection of the nomination paper and setting aside the election when the requirement of declaring assets is not a requirement of statue or the rules or the order issued under the Act.

In view thereof, we do not find any error in the order of the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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