

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11774 of 2016

Deo Muni Devi, Wife of Late Satya Narayan Singh, Resident of Village-Laxmanpur, P.O. Chanda, P.S. Bakhtiyarpur, District -Patna presently Mukhiya of Gram Panchyat Raj Missi 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 Commissioner (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commissioner (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The State of Bihar, through the District Magistrate-cum-District Election Officer (Panchayat), Patna.
5. The District Magistrate-cum-District Election Officer (Panchayat), Patna, District- Patna.
6. The Block Development Officer, Bakhtiyarpur, District- Patna.
7. Dulari Devi, Wife of Late Satya Narayan Singh, Resident of Village and P.O. Sirsi, P.S. Bakhtiyarpur, District- Patna.
8. Anita Devi, wife of Vijay Krishna Prasad.
9. Kumar Shashi Ranjan Sinha, son of Late Ranjit Singh.
10. Chandan Kumar, son of Ram Bilash Singh.
Residents of village Mishi, P.S.-Bakhtiyarpur, District- Patna.
11. Pinki Kumari, wife of Nawal Singh, resident of village-Lakshmanpur, P.s.-Bakhtiyarpur, District- Patna.
12. Madan Prasad, son of Shyam Sundar Singh, resident of village-Misi, P.s.-Bakhtiyarpur, District- Patna.
13. Manorma Devi, wife of Ram Adhar Singh, resident of village-Sirsi, P.S.-Bakhtiyarpur, District- Patna.
14. Ram Udesb Kumar, son of Naresh Prasad.
15. Vimlesh Kuamr Yadav, son of Vant Prasad Yadav.
16. Sanjay Prasad, son of Sagar Ray.
All are residents of village Mishi, P.S.-Bakhtiyarpur, District- Patna.
17. Vimlesh Kumar Yadav, son of Vant Prasad Yadav.
18. Sanjeev Prasad, son of Sagar Rai.
Both are residents of village-Lakshmanpur, P.S.-Bakhtiyarpur, District- Patna.
19. Ajay Kumar, son of Kishori Prasad, resident of village-Saraiya, Post- Sirsi, P.S.-Bakhtiyarpur, District-Patna.

.... Respondents

Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate
For the State : Mr. S.K. Mandal, SC-3
Mrs. Neelam Kumari, AC to SC-3

For the Commission : Mr. Amit Srivastava, Advocate
Mr. Girish Pandey, Advocate
For the pvt. Respondents : Mr. Sanjay Kumar Verma, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 08-08-2016

I have heard parties and perused the records of the case.

Through this writ application, the petitioner seeks quashing of the order dated 29.06.2016 passed by the Munsif, Barh in Election Petition No.23 of 2016, as contained in Annexure-3, by which the order of status quo till appearance of opposite party has been directed to be maintained which is in the form of temporary injunction.

The writ petitioner was elected on the post of Mukhiya in the election held on 22.05.2016 in which counting of vote was completed on 6.06.2016 declaring her successful and a certificate in this regard in Form 22 has been issued, a copy of which has been appended as Annexure-1.

It appears that in several cases the concerned judicial officer has passed such type of order restraining the authorities from administering oath upon the winning candidate. The challenge to the election has been made by filing an election petition which has been appended as Annexure-2 alleging several irregularities committed by the Returning Officer during counting of votes, which has been dealt in paragraphs 11 to 15 of the Annexure-2.

The issue is no longer *res integra* as this Court in CWJC No.10661/2016 (*Mamta Devi v. The State of Bihar and others*) has already considered the same and has quashed one of such order vide judgment dated 28.07.2016. The grounds for challenge are identical to the grounds which were raised in the aforesaid writ petition.

The applicability of the Order 39 Rule 1 of the Code of Civil Procedure (hereinafter referred to as 'the Code') has also been questioned by the writ petitioners in both the cases on the ground that the Apex Court in *Jyoti Basu and others Vs. Debi Ghosal and others (AIR 1982 Supreme Court 983)* had laid down in clear terms that an election petition is neither an action at Common Law nor in equity. Only those rules which the statute makes would apply in such matters. Being special jurisdiction, it has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied.

It has been contended on behalf of the writ petitioner that Rule 109 of the Code merely lays down that a competent court of law shall hear the election petition in the manner prescribed by the Code. Thus, it necessarily indicates towards the proceedings which have been provided in the Code for the purpose of hearing of a suit only and the entire provisions of the Code cannot be made applicable.



However, a Division Bench of this Court in *Jageshwar Rai Vs. The State of Bihar and Ors. [2007 (1) PLJR 327]*, though the issue involved therein was as to whether amendments can be allowed in the election petition or not, has held in paragraph 14 of the aforesaid decision that not only the principle, but all the procedures including the provision of amendment, prescribed in the Code will be applicable in the election matters, except those which are specifically barred by any provision of the Act or the Rules.

Learned counsel for the respondent no.7, on the strength of the aforesaid decision, has submitted that since there is no specific bar to the application of Order 39 Rule 1, the same would be applicable.

However, coming to the merit of the case, it appears that identical order was also passed in Election Petition No.15 of 2016 which was under challenge in CWJC No.10661/2016. The order of temporary injunction restraining the winning candidate to subscribe oath has been passed without recording that ingredients, such as, prima facie case, balance of convenience as well as irreparable loss are available in favour of the election petitioner. The order has been passed merely on presumption that the allegations made by the election petitioner are correct. In my view, it prima facie shows that the concerned judicial officer lacks basic knowledge of civil law.



Learned counsel for the private respondent no.7 has also placed reliance upon a decision of the Apex Court rendered in *Edara Haribabu Vs. Tulluri Venkata Narasimhamand Ors. [(2016) 2 Supreme Court Cases 640]* to impress upon this Court that the order of injunction could be passed even for stopping anyone from occupying the elected office, however, the present case is completely distinguishable on the facts of the aforesaid case. The issue therein was that after having been elected as Chairperson of the Zila Parishad, a complaint was made that the concerned candidate had violated whip in regard to the election and on such complaint having been made, the Collector-cum-Presiding Officer had declared him disqualified to be member of Zila Parishad territorial constituency and, therefore, had directed him to vacate the office of the Chairperson. The trial court refused to interfere in such matter. The matter travelled up to the High Court. The High Court stayed the order and directed that the concerned person would continue as Chairperson till a final decision is taken. However, in the case in hand, it is not a fact that the election concerned has either been set aside or even elected person has been declare disqualified by the competent authority, therefore, in my view, the aforesaid decision would not come to the help of the respondent no.7.

That apart, the Judicial Officer concerned has further



proceeded to personally write a letter to the Block Development Officer, Bakhtiyarpur, Barh directing him not to administer oath upon the winning candidate, a copy of which has been appended as Annexure-4, and also to furnish the action taken report before him at once and this letter was written on the same day when the order impugned was passed.

If the order was passed on the same day then it was up to the election petitioner to obtain a certified copy and produce it before the competent authority but it is intriguing as to why the Presiding Officer will write a letter intimating the Block Development Officer that he has passed such order but the copy of the order was neither appended therewith nor was produced by anybody before the competent authority.

In my view, such action of the court concerned was wholly without jurisdiction as there is no statutory power conferred upon him to act in such a manner.

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)*. The impugned order/letter as contained in Annexure-3 and 4 are quashed and set aside. The competent authority would proceed to administer oath upon winning candidate. However, the court below would

proceed to bring the concerned election case to its logical conclusion on its own merit and in accordance with law.

Let the records be immediately sent back to the court concerned.

However, before parting with the issue, in view of the aforesaid facts and circumstances, 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 4, so that it reaches this Court within a period of four weeks.

Put up this matter after four weeks.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.08.2016
Transmission Date	N.A.