

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2142 of 2015
IN
Civil Writ Jurisdiction Case No. 9297 of 2015**

=====

Santosh Kumar Singh Son of Shri Ram Ekram Singh resident of Village - Bheria,
P.O. Dhamar, P.S. Ara Muffasil, District - Bhojpur

.... **Appellant**

Versus

1. The State of Bihar
2. The State Election Commission, represented through its Secretary, the State Election Commission, Sone Bhawan, Veer Chand Patel Path, Patna 800001
3. The District Magistrate - Cum - District Election Officer (Panchayat), Bhojpur, Ara
4. The Dy. Collector - Cum - Returning officer (Panchayat), Bhojpur, Ara
5. The Assistant Returning Officer - Cum - Block Education Officer, Block, Ara, District - Bhojpur
6. Rajendra Singh S/o Late Gorakh Nath Singh resident of Village – Amarpur (Marwatia), P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
7. Smt. Poonam Devi Wife of Shri Santosh Kumar Singh resident of village - Bheria, P.O. Dhamar, P.S. Ara Muffasil, District - Bhojpur
8. Smt. Lakshmi Devi W/o Shri Santosh Kumar Singh resident of village - Bheria, P.O. Dhamar, P.S. Ara Muffasil, District - Bhojpur
9. Parmeshwar Singh S/o Shri Rajendra Singh resident of village + P.O. Khajurai, P.S. Ara Muffasil, District - Bhojpur
10. Uma Kant Pandey S/o Shri Shivjee Pandry resident of village + P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
11. Santosh Paswan Son of Shri Jalim Paswan resident of village + P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
12. Ravi Kumar Son of Shri Vakil Singh resident of village + P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
13. Virendra Paswan S/o Shri Shambhu Paswan resident of village + P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
14. Madan Mohan Pandey Son of Late Valmiki Pandey resident of Village - Amarpur (Marwatia), P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur
15. Ghanshyam Tiwari S/o Shri Awadhesh Tiwari resident of village - Chirkhundi, P.O. Khajuria, P.S. Ara Muffasil, District - Bhojpur

.... **Respondents**

=====

Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate

For the State : Mr. J.P. Karan, AAG 4
Mr. A.K. Dubey

For Respondent No.2 : M/s. Amit Shrivastava, Sanjeev Nikesh

For Pvt. Respondents : M/s Rajendra Narain, Surendra Kr. Choubey
Sanjay Kumar

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

Pa o/

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
CAV JUDGMENT AND ORDER

(Per: **HONOURABLE THE ACTING CHIEF JUSTICE**)

Date: 26-04-2016

Whether non-disclosure of a criminal case pending against a person, who seeks to contest an election for the post of Mukhiya of a Gram Panchayat, in violation of the provisions embodied in Section 125-A of the Bihar Panchayat Raj Act, 2006 ((hereinafter referred to as 'the Act'), would amount to *corrupt practice* within the meaning of Clause (b) of Sub-section (1) of Section 139 of the Bihar Panchayat Raj Act, 2006.

2. The question posed above is the principle question, which has been raised in this appeal preferred against the order, dated 10.9.2015, passed, in C.W.J.C. No.9297 of 2015, by a learned single Judge dismissing the writ petition, whereby the appellant herein had challenged the order, dated 12.6.2015, passed by the learned Munsif-III-cum-Election Tribunal, Bhojpur, Ara, in Election Petition No. 8 of 2011, holding as void the appellant's election as Mukhiya of Gram Panchayat Khajuriya, in the district of Bhojpur, with further directions to the State Election Commission, Patna, and District Election Officer, Bhojpur, to declare the next candidate, who had secured the majority of valid votes, as Mukhiya of the Gram Panchayat, Khajuriya.

Pa o/

3. The writ petitioner has assailed, as the appellant of the present appeal, the impugned orders of the learned Tribunal as well as learned single Judge, primarily, on the ground that the Election Petition itself was not maintainable as the Election Petitioner (who is respondent No.6 in this appeal) did not deposit the entire *court fees* within the statutory period of limitation, which was not condonable, and, thus, fatal to the very maintainability of the election petition.

4. Before we consider the grounds on which the appellant has sought to assail the impugned orders of the Election Tribunal and the learned Single Judge, it would be apposite to notice the facts of the case in brief.

5. In the year 2011, the State Election Commission notified the election, for the posts of Mukhiya, in the Gram Panchayats of the State of Bihar. The dates notified for election to Panchayat Raj, Khajuria, which concern us, are as follows:

- a) *Date of filing of nomination form – 24.02.2011 to 3.3.2011*
- b) *Date of scrutiny – 07.03.2011*
- c) *Date of withdrawal – 09.03.2011*
- d) *Date for allotment of symbol – 09.03.2011*
- e) *Date of Polling – 20.04.2011*
- f) *Date of declaration of result- 19.05.2011*

6. Amongst others, the appellant and respondent No.6 (Rajendra Singh) filed their nomination papers on 1.3.2011 and

3.3.2011 respectively for the post of Mukhiya. On scrutiny and verification, the nomination papers of eleven candidates, including the petitioner and respondent No.6, were accepted as valid. All the eleven candidates contested the election. Results were declared on 19.5.2011 and the votes secured by the candidates were as follows:

a) Ghanshyam Tiwari	- 45
b) Prameshwar Singh	- 397
c) Poona Devi	- 26
d) Madan Mohan Pandey	- 79
e) Ravi Kumar Singh	- 200
f) Rajendra Singh (Res.No.6)	- 862
g) Laxmi Devi	- 48
h) Birendra Rai	- 28
i) Shrikant Pandey	- 369
j) Santosh Paswan	- 52
k) Santosh Kr. Singh(appellant)	- 1268

7. The appellant, Santosh Kumar Singh, having secured majority of votes of 1268, was declared elected as Mukhiya. Respondent No.6 (i.e., namely, Rajendra Singh), who had secured second highest number of 862 votes, filed, on 18.6.2011, Election Petition, bearing Election Petition No.8 of 2011 (Annexure-3 to the writ petition) before the learned Munsif-III-cum-Election Tribunal, Bhojpur, at Ara, for holding the election of the appellant void and declaring respondent No.6 herein as duly elected Mukhiya.

8. The election was challenged on the ground that the

Pa o/



appellant did not, in his nomination papers, disclose the pendency of the criminal cases against him, namely, Ara Mufassil P.S. Case No. 235 of 2001, dated 8.11.2001, and Ara Mufassil P.S. Case No. 68 of 2001, both under Sections 41, 42 and 33 of the Bihar Forest Act, 1927, and, therefore, his nomination papers were in breach of mandatory provisions of Section 125-A of the Bihar Panchayat Raj Act and, thus, void under Section 139 of the Bihar Panchayat Raj Act, 2006.

9. The appellant filed his reply. He objected to the maintainability of the election petition being barred by limitation as *court-fees* were not deposited within the mandatory period of one month (Annexure-4 to the writ petition). The Election Tribunal dismissed the preliminary objection vide its order, dated 4.7.2012, which was challenged by the appellant in C.W.J.C. No. 17740 of 2012. However, the writ petition, too, came to be dismissed on 21.9.2012. Being aggrieved, the appellant filed L.P.A. No. 1786 of 2012, which was dismissed as withdrawn by order, dated 5.12.2012. These orders are annexed as Annexure-E, F and G respectively to the counter affidavit of Respondent No.6 in C.W.J.C. No. 9297 of 2015.

10. The Election Petition was, later on, heard on merit and by judgment, dated 12.6.2015, the learned Munsif-III-

Pa o/



cum-Election Tribunal, Bhojpur, at Ara, allowed the election petition, declaring the election of the appellant as void, and further directing the State Election Commissioner, Patna, and the District Election Officer, Bhojpur, at Ara, to declare the next candidate, who had received majority of valid votes, as Mukhiya of Gram Panchayat, Khajuria, Ara block, district Bhojpur, so that public money and time could be saved and justice be done.

11. The appellant, being aggrieved, challenged the order of the Election Tribunal by filing a writ application in the High Court giving rise to C.W.J.C. No. 9297 of 2015, which was dismissed on 10.9.2015. While dismissing the writ petition, the learned single Judge observed that the appellant had, admittedly, not divulged that the said criminal cases were pending against him, which was mandatory under Section 125-A of the Bihar Panchayat Raj Act and, as such, his election would be void under the provisions of Section 125-A read with Section 139 of the Bihar Panchayat Raj Act, 2006. In support of this conclusion, the learned Single Judge relied upon the decision of the Supreme Court, in *Krishnamoorthy v. Sivakumar & Ors*, (A.I.R. 2015 SC 1921).

12. The learned single Judge has also observed that though there is no specific pleadings by the writ petitioner, in his

Pa o/

election petition, seeking him to be declared winner, the election petitioner was, in the light of Section 140 of the Bihar Panchayat Raj Act, 2006, entitled to the relief of seeking a declaration in his favour as he had secured second highest number of valid votes.

13. The appellant has, amongst others, primarily assailed the impugned order on the following grounds:

(a) The election petition was barred by law of limitation and, as such, both the Election Tribunal and the Writ court committed an error of law in not dismissing the petition at the threshold, though the same was not maintainable. In support of his submission, the appellant has placed reliance on the following decisions, namely, (i) *State Bank of India v. B.S. Agriculture Industries*, reported in (2009)5 SCC 121; (ii) *Rajendra Shankar Shukla & Ors v. State of Chattisgarh & Ors*, reported in 2015(10)SCC 400; (iii) *P.Leela Rani v. Agency Divisional Officer*, reported in 2002(6) ALD 251.

(b) Even if the appellant's preliminary objection, with respect to maintainability, was rejected earlier up to this Court in the Letters Patent Appeal, he is not debarred from raising the same issue, once again, as it involves pure question of law and principle of *res judicata* would not come into play. In support of his submission, learned counsel has relied upon decisions, in (i)

Pa o/

Union of India v. Pramod Gupta & Ors, reported in (2005)12 SCC 01, (ii) *Bishwanath Prasad Singh vs. Rajendra Prasad & anr*, reported in (2006)4 SCC 432 and (iii) *Erach Boman Khavar v. Tukaram Shridhar Bhat & anr*, reported in (2013)15 SCC 655.

(c) The respondent No.6, as election petitioner, has not produced, before the election Tribunal, material evidence to establish that non-disclosure of pending criminal cases by the writ petitioner, in his nomination papers, caused undue influence on the voters. It was imperative for the election petitioner to set out the factual matrix clearly and conjointly in support of the claim and failure to do so would deprive him of the relief claimed. In support of the submission so made, the appellant has relied upon decisions in *Harishankar Jain v. Sonia Gandhi*, reported in (2001) 8 SCC 233 and also in *Laxmi Kant Bajpai v. Haji Yaqoob*, reported in (2010) 4 SCC 81.

14. We have heard Mr. Y. V. Giri, learned Senior Counsel, appearing for the appellant and Mr. Amit Shrivastava, learned Counsel, appearing for the respondent No.2. We have heard also Mr. J. P. Karn, learned Additional Advocate General No.4, appearing for respondent Nos. 3 to 5, and Mr. Rajendra Narain, learned Senior Counsel, appearing for the respondent

Pa o/

Nos. 7 to 15, and have perused the materials on record.

15. Respondent No.6, i.e., the election petitioner, had challenged the election of the appellant on the ground that non-disclosure by the present appellant, in his nomination papers of pending criminal cases, was in breach of Section 125-A of the Bihar Panchayat Raj Act, 2006, inasmuch as it was incumbent on the part of every candidate, including the appellant herein, to furnish the details as to whether he was convicted/acquitted/discharged of any criminal offence or whether he was accused in any pending case of any offence punishable with imprisonment for more than six months and in which a charge had been framed or cognizance has been taken by a competent court of law.

16. From the decision in *Krishnamoorthy* (supra), what becomes clear is that disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law, is imperative and when there is non-disclosure of the offences pertaining to the categories mentioned hereinbefore, it creates an impediment in the free exercise of electoral right. Concealment or suppression of this nature deprives the voters to make an informed and advised

Pa o/

choice as a consequence of which it would come within the ambit of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate on the part of the candidate and would, therefore, amount to causing influence leading to *corrupt practice*.

17. In the facts at hand, there is no dispute that the offence, which the appellant was allegedly involved, relates to moral turpitude. It had not been the case of the writ petitioner, i.e., the elected candidate, that he had furnished the essential information, which is required to be furnished by a candidate in the light of the provisions of Section 125-A of the Bihar Panchayat Raj Act, 2006.

18. Admittedly thus, the appellant herein has not disclosed, while filing his nomination paper, the cases, involving moral turpitude, which had been pending against him.

19. Whether omission of the elected candidate (i.e., the writ petitioner-appellant) to make disclosure, mandated by Section 125-A of the Act, amounted to *corrupt practice* within the meaning of Section 139 of the Act or not, was the bone of contention in the writ petition inasmuch as the writ petitioner contended that the said non-disclosure did not amount to *corrupt practice*.

Pa o/

20. In other words what fell for determination, in the writ petition, was : whether the appellant's omission to disclose, while filing his nomination paper, the fact that the said cases, involving moral turpitude, had been pending against him, amounted to *corrupt practice* within the meaning of Section 139 of the Act?

21. In order to appreciate the above rival submissions, it would be apposite to take note of Section 125-A of the Bihar Panchayat Raj Act, 2006, which is reproduced hereinbelow for easy reference:

“125.A (1)Furnishing of certain information essential for candidates- A candidate shall, apart from any information which he is required to furnish in his nomination papers delivered under the Act or the Rules made thereunder, also furnish information on affidavit on the following aspects in relation to his/her candidature-

(i) Whether he is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine;

(ii) Prior to six months of filing of nominations, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for more than six months, and in which a charge has been framed or cognizance has been taken by a competent court of law. If so, the details thereof.

(iii) xx xx xx xx

Pa o/

(iv) xx xx xx xx

(v) xx xx xx xx”

22. We would next consider Section 139 of the Bihar Panchayat Raj Act, 2006, which states the ground on which an election can be declared void. It would appear from Section 139 that it was necessary for a candidate, contesting election under the Bihar Panchayat Raj Act, 2006, to declare as to whether he is convicted/acquitted or discharged of any criminal offence in the past or whether he is an accused in any pending case of any offence punishable with imprisonment for more than six months. The appellant had, admittedly, not disclosed the information required under Section 125-A(1)(i)(ii) of the Bihar Panchayat Raj Act, 2006.

23. The issue, therefore, is, if we may reiterate, whether non-disclosure would render the election void?

24. Section 139 of the Act states the grounds on which an election can be void, which reads as follows:

“139.Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion-

- (a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or*
- (b) that any corrupt practice has been committed by a*

Pa o/

returned candidate or his agent or by any other person with the consent of a returned candidate or his agent”.

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent, or

(iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void, or

(iv) by any non-compliance with the provisions 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”

25. As per Section 139 of the Act, an election can be declared void if a candidate commits, amongst others, *corrupt practice* or if there has been improper acceptance of any nomination paper as provided under sub-Section 139(1)(b) and 139(1)(d)(i). We are of the view that the appellant, by not furnishing information with respect to past and present criminal cases, prior to six months of his filing nomination papers, has acted in breach of the Section 125-A(1) of the Act. Non-furnishing of such details would *per se* amount to *corrupt practice*.

Pa o/



26. It is true that no specific material was produced, on behalf of respondent No. 6, in support of his submission that non-furnishing of necessary information with respect to criminal antecedents, as required under section 125-A of the Act, has caused undue influence on the voters. However, the same would not defeat the claim of the election petitioner inasmuch as the non-disclosure of the requisite information by the elected candidate in his nomination paper, as was required by Section 125-A of the Act, would be deemed to have caused in the light of the decision, in Krishnamoorthy (supra), undue influence on the voters and, therefore, amounted to *corrupt practice*.

27. In case of **Krishnamoorthy** (supra), the Supreme Court, while examining the provisions of Sections 259 and 260 of Tamil Nadu Panchayat Act, *pari-materia* of Section 125-A and Section 139 of the Bihar Gram Panchayat Act, observed, in paragraph 86, as follows:

“86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated bylaw is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding

Pa o/

clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature”.

28. In all fairness, learned Counsel for the appellant does not dispute the proposition of law that if a candidate, seeking election under the Bihar Panchayat Raj Act, 2006, does not furnish necessary information as required under Section 125-A, the same would amount to undue influence and the election can be declared void under Section 139 of the Bihar Panchayat Raj Act; rather, the challenge is founded on the ground that the election petition itself was barred by law of limitation as *court fees* were not paid within mandatory period. He submits that even

Pa o/

if the preliminary objection raised by him, in this regard, had been rejected earlier up to the Letters Patent Appeal, the law does not prevent him from raising it again as the issue is one of pure question of law and principle of *res judicata* would not apply. In support of his submission, learned Counsel for the appellant has relied upon the following decisions in (i) ***Union of India v. Pramod Gupta & Ors***, reported in **2005(12) SCC 01**; (ii) ***Bishwanath Prasad Singh v. Rajendra Prasad & anr***, reported in **2006(4) SCC 432** and (iii) ***Erach Boman Khavar v. Tukaram Shridhar Bhat & anr***, reported in **2013 (15) SCC 655**.

29. In our view, the submission of the appellant is devoid of merit and is fit to be rejected. At the first instance, we are unable to accede to the submission of the appellant that the issue of limitation was not decided by this Court. It is relevant to point out here that the appellant raised the issue of limitation as preliminary issue in the learned Tribunal contending that the election petition was barred as the entire *court fees* had not been paid in time; but this plea was rejected. Being aggrieved, the appellant filed C.W.J.C. No. 17740 of 2012. A learned Single Judge, by order, dated 21.9.2012, observed that “he did not see any illegality in the impugned order”.

(Emphasis is added)

Pa o/

30. The appellant further carried the matter in appeal giving rise to Letters Patent Appeal No.1746 of 2012, which was dismissed as withdrawn by order, dated 5.12.2012, which is reproduced below:

Order dated 5.12.2012

“Learned counsel for the appellant seeks permission to

withdraw this application.

Permission is accorded.

Accordingly, this application is dismissed as withdrawn”.

31. It would appear from a bare perusal of the order of the learned single Judge that the present one is not a case, wherein the issue was not raised and not decided. Further-more, the appellant did not press the issue in appeal; rather, the appeal was withdrawn without obtaining any leave. Even if the issue was wrongly decided, it was open to the appellant to have agitated the matter by way of review or he could have carried the matter to the Supreme Court. A person, who fails to take resort to the remedy, which is available to him, cannot challenge the same in any subsequent independent proceeding. A Constitution Bench of the Supreme Court, in *State of West Bengal vs. Hemant Kumar*, (A.I.R. 1966 SC 1061), has observed that a wrong decision by a

Pa o/

Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher Tribunal or other procedure like the review, which law provides. The relevant observations, appearing at paragraph 14 of **Hemant Kumar** (supra), read as follows:

“14. Before proceeding with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental misconception as it seeks to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on 4-4-1952 had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous as seen from the later judgment of this Court does not render it any the less final and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 4-4-1952 bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not”.

32. In view of the forgoing discussions, we are of the considered view that it was not open to the appellant to raise the

Pa o/



preliminary issue again and again, when he had failed either to file review or appeal before the superior court. The controversy has to be brought to an end. As the case laws, relied upon by the appellant in support of his submission, that the election petition, in question, was barred under the law of limitation, even assuming to be correct, would be of no aid to him in the present appeal, the plea is rejected.

33. The appellant has argued that in any view of the matter, both the learned single Judge and the Tribunal erred in directing the Election Officer to ascertain as to who, among the contestants, secured next highest number of valid votes and to declare him elected accordingly.

34. We find that the learned single Judge took the view that once the election of the appellant was declared void under Section 139 of the Act, respondent No. 6 would be entitled to the benefit under Section 140 of the Act, inasmuch as Section 140 vests discretion, in the Election Tribunal, to come to a finding on the issue as to who, among the contestants, had secured the next highest valid votes. The learned single Judge approvingly observed that this was exactly what the Election Tribunal had done in the present case.

35. In our view, both the learned Tribunal and the learned

single Judge have failed to consider the true import of Section 140 of the Bihar Gram Panchayat Act, which is quoted hereinbelow:

“140. Grounds on which a candidate other than the returned candidate may be declared to have been elected.- (1) if any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claims a declaration that he himself or any other candidate has been duly elected and the Prescribed Authority is of opinion-

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes, or*
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Prescribed Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.*
- (2) the decision of the Prescribed Authority shall be final.”*

36. It would appear from a perusal of Section 140 of the Act that once a candidate is declared elected, it is only the prescribed Authority, i.e., the Election Tribunal, which can declare such election to be void and declare the other candidate, as the case may be, to have been duly elected. These provisions do not vest such power in the State Election Commission or the

Pa o/

Election Officer. It was only the prescribed Authority, which is the Tribunal in the present case, to have declared such other candidate as duly elected subject to review by higher courts.

37. In the case at hand, the learned Tribunal, instead of declaring respondent No. 6, who has secured the second highest number of valid votes, as the returned elected, directed the State Election Officer to ascertain the position and make a declaration accordingly. The learned single Judge, too, overlooked the matter. Though we are in agreement with the view of learned single Judge that the appellant is not entitled to any relief, yet we disagree with the second limb of the order, whereby the learned single Judge has upheld the direction of the Election Tribunal requiring the Election Officer to ascertain as to who, among the contestants, had secured next highest valid votes and to declare him returned accordingly.

38. In the result and for the foregoing reasons, we, while upholding the order of the learned Tribunal, declaring the election of the appellant herein, as void, hereby set aside and quash the direction, which has been given by the order, dated 12.6.2015, passed by the learned Tribunal that, *'the State Election Commission, Patna, and the District Election Officer, Bhojpur, Ara, are directed to declare the next candidate who has got*

Pa o/

majority of valid votes now, as Mukhiya of Gram Panchayat Khajuria of Ara block, District Bhojpur, so that the expenditure of public money and time could be saved and justice could be done’, and direct the learned Tribunal to pass necessary order, in accordance with law, in the light of what has been pointed out above.

39. With the above observations and directions, this appeal stands disposed of.

(I. A. Ansari, ACJ)

Samarendra Pratap Singh, J :

I agree

(Samarendra Pratap Singh, J)

A.F.R.
Md.Jamaluddin Khan

U			
---	--	--	--