

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10661 of 2016

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Mamta Devi, W/o Yogendra Pal, R/o Village- Sabnima, P.S.- Athmalgola, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Patna
3. The Returning Officer-cum-Block Development Officer, Athmalgola, District- Patna.
4. The Observer Gram Panchayat Election, Athmalgola, District- Patna.
5. The State Election Commissioner, Bihar Sone Bhawan, Patna.
6. Kanti Kumari W/o Sri Ravi Kmar Ranjan, R/o Village- Budhra, P.S. Athmalgola, District- Patna.
7. Anjani Kumari W/o Mukesh Kumar, Resident of Village- Shbnima, P.S.- Athmalgola, District- Patna.
8. Usha Devi W/o Mithilesh Singh resident of Village- Chanda, P.S.- Athmalgola, District- Patna.
9. Kavita Devi W/o Raju Kumar resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
10. Jatiya Devi W/o Uday Rai, resident of Village Naya Tola Sabnima, P.s.- Athmalgola, District- Patna.
11. Jhaneshwari Devi W/o Misri Paswan, resident of Village- Sabnima, P.S.- Athmalgola, District- Patna
12. Nilam Devi W/o Mahesh Ram, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
13. Punam Kumari W/o Rajiv Kumar resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
14. Mamta Devi, W/o Shikesh Kumar, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
15. Mamta Devi, W/o Arvind Kumar, resident of Village- Nayatola Sabnima, P.S. Athmalgola, District- Patna.
16. Mamta Devi, W/o Rajiv Kumar, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
17. Mina Devi W/o Madan Kumar, resident of Village- Chanda, P.S. Athmalgola, District- Patna.
18. Mina Devi, W/o Ram Iqbal Roy, resident of Village- Dagi Dargah Sabnima, P.S. Athmalgola, District- Patna.
19. Radhika Devi W/o Shashikant Singh, resident of Village- Chanda, P.S. Athmalgola, District- Patna.
20. Rina Devi W/o Anil Kumar, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
21. Vibha Devi, W/o Ashutosh Kumar, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.
22. Savita Singh, W/o Ramjharokha Singh resident of Village- Chanda, P.S. Athmalgola, District- Patna.
23. Sunita Devi, W/o Janardan Singh, resident of Village- Chanda, P.S. Athmalgola, District- Patna.
24. Suman Sharma, W/o Dipak Kumar Singh, resident of Village- Sabnima, P.S.

Athmalgola, District- Patna.

25. Suchita Devi W/o Ramsingar Singh, resident of Village- Chanda, P.S. Athmalgola, District- Patna.

26. Suchinta Devi, W/o Fotulal Ray, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.

27. Sumita Devi, W/o Vinod Kumar, resident of Village- Sabnima, P.S. Athmalgola, District- Patna.

.... Respondents

Appearance :

For the Petitioner : M/s Gajendra Kumar Singh and
Radha Krishna Singh, Advocates

For the SEC: : Mr. Amit Shrivastava and
Mr. Girish Pandey, Advocates

For the State: Mr. K.K. Jha, AAG 8 and
Mr. K.C. Jha, AC to AAG 8

For the Private Respondent: Mr. Rajendra Narain, Sr. Advocate
Mrs. Anju Narain, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 28-07-2016

Heard the parties and perused the records of the case.

Through this writ application, the petitioner seeks quashing of the order dated 20.06.2016 passed by the Munsif, Barh in Election Petition Case No. 15 of 2016 as contained in Annexure 7 as also the letter 852 dated 24.06.2016 written by the Block Development Officer, Athmalgola as contained in Annexure 5, by which he communicated to the petitioner that the Munsif, Barh, District Patna, the Presiding Officer, has directed the Block Development Officer, Athmalgola vide letter dated 23.06.2016 as contained in Annexure 5/1 not to administer oath upon the declared winner, i.e., the petitioner, on the post of Mukhiya of Sabnima Gram Panchayat under Athmalagola Block.

The election petitioner has been impleaded as respondent no. 6, who has appeared through Vakalatnama and has been heard.

This matter is being heard and disposed of without issuing notice to the other private respondents in view of the fact that for the present dispute, as to whether such injunction order could have been passed or not is in between the election petition and the winning candidate, i.e., the writ petitioner. Other private respondents, who have contested the election, have neither filed any election petition challenging the election nor have they filed any petition under Order XXXIX Rule 1 read with section 151 of the Code of Civil Procedure(hereinafter to be referred to as “the Code”), however, they have rightly been impleaded as defendants/opposite parties in the election petition for the reason that the election petitioner not only seeks relief regarding setting aside the election concerned but has also sought declaration as elected Mukhiya of the concerned Gram Panchayat. In that view of the matter, though all of the other private respondents may be necessary parties to be heard in the election petition but in the present dispute their appearance would be of no relevance.

The facts which form bedrock of the writ petition stand narrated as under:-

Election of Gram Panchayat of Sabnima was held on



26.05.2016. The writ petitioner having obtained 1037 valid votes cast in the election was declared elected as Mukhiya of Sabnima Gram Panchayat and was granted certificate to that effect. It would not be out of context to mention here that, before declaration of result, the respondent no. 3, i.e., the Returning Officer-cum-Block Development Officer concerned issued letter no. 859 dated 27.06.2016, as contained in Annexure 3, addressed to the petitioner that none of the candidates had filed any application for recounting of votes of any booth. Annexure 4 is a letter dated 17.06.2016 issued by the Returning Officer-cum-Block Development Officer concerned inviting the petitioner to participate in the meeting for election of Up Mukhiya/Up Sarpanch/Pramukh/Up Pramukh etc. However, suddenly, on 24.06.2016, a letter was issued vide Annexure 5, informing the petitioner that though a notice under Form 24 for the purpose of administering oath on 27.06.2016 was issued earlier but in view of the direction of the Munsif, Barh for maintaining *status quo* and not administering oath till further order, such meeting for administering oath would not be held. Then it came to the knowledge of the petitioner that Election Petition No. 15 of 2016 was filed by the respondent no. 6 under section 137 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as “the Act”) read with Rule 106 of the Bihar Panchayat Election Rules,



2006(hereinafter to be referred to as “the Rules”) for setting aside the election of the writ petitioner and further for declaring her as the elected winning candidate. From the entire ordersheet, which has been appended as Annexure 7, it appears that the election petition was filed on 14.06.2016 and the Serishtedar was directed to submit its report on 18.06.2016. It further shows that on 18.06.2016 the order has been passed that the election petitioner has filed attendance and, since court-fee has been furnished, the election petition stands admitted. 20.06.2016 was fixed the next date for hearing. In the margin of the ordersheet it stands noted by the Presiding Officer as under”

“Proper court fee is paid. Admit.”

Thereafter, he has put his signature on the same page.

On 20.06.2016 itself the impugned order was passed stating that in the facts and circumstances of the case a permanent injunction cannot be granted without hearing the respondent and the returning officer or the election commission, as such, let a temporary injunction be allowed refraining the winner Mukhiya from subscribing oath, if he has already not been administered oath, till the receipt of any direction of this court. The prayer for permanent injunction was rejected holding it a premature stage, however, liberty has been granted that the same can be entertained

at a later stage depending upon the facts and circumstances of the case. Office clerk was directed to issue letter to the relevant office in compliance to the direction passed above.

Eventually, Annexure 5/1, which is the impugned letter dated 23.06.2016 came to be issued himself by the Munsif, Barh himself.

In the aforesaid background of the factual matrix, the writ petitioner raises the following issues:-

- (I) Whether Order XXXIX Rules 1 and 2 of the Code would at all be applicable in an election case?
- (II) Whether it was proper for the competent court to direct for maintaining *status quo* restraining the competent authority from administering oath upon the winning candidate?
- (III) Whether it was further proper for the competent court to write a letter to the Returning Officer -cum- Block Development Officer concerned to refrain from administering oath upon the winning candidate?

(IV) Whether, by doing the aforesaid, the prescribed court has transgressed the jurisdiction conferred upon it by the Act, and the Rules framed thereunder?

All the issues, being inter-twinning, are being considered together.

It has been submitted on behalf of the petitioner that once the election is held, result is declared and certificate is also granted to the winning candidate then the election process is complete and the prescribed court under section 137 of the Act and Rule 106 of the Rules does not have any authority to direct the Returning Officer not to administer oath upon the winning candidate. It is only empowered to entertain the election petition and, thereafter, if it comes to the conclusion that the concerned election, on certain grounds, is required to be set aside and/or any other candidate is required to be declared as elected candidate, it would proceed to set aside the election and make such declaration as it thinks fit and proper. It is next contended that though Rule 109 of the Rules lays down that the competent court of law shall hear the election petition in the manner prescribed by the Code, the relevant provisions of the Code, which are required for the purpose of



hearing of a suit would only be applicable and not the entire provisions of the Code, such as, Order XXXIX Rule 1 or Order XL which are required for the purpose of protecting the property under the dispute from alienation, wastage or mismanagement till the final disposal of the concerned suits.

It is further urged that there is no jurisdiction conferred upon the prescribed/concerned court to write a letter to the Returning Officer, even after passing of an order of restraintment, for not administering oath upon the winning candidate, thus, his action is wholly without jurisdiction.

Per contra, learned counsel for the respondent no. 6 has submitted that the entire provisions of the Code would be applicable in the election cases unless there is specific bar. In support of his aforesaid submission, learned counsel has placed reliance upon a decision rendered by a Division Bench of this Court in **Jageshwar Rai v. The State of Bihar and others (2007(1) PLJR 327)**, in particular paragraph 14 thereof. He next contends that, during the counting of votes, several irregularities were committed which stand detailed in the election petition as well as the petition filed under Order XXXIX Rule 1 read with section 151 of the Code and the court concerned, after prima facie being satisfied with respect to those irregularities, has come to the

conclusion that it would be in the interest of justice to pass such restraintment order, thus, his action cannot be faulted with.

Mr. Amit Shrivastava, learned counsel appearing on behalf of the respondent no. 5 contends that the provisions of Order XXXIX Rule 1 read with section 151 of the Code would not at all be applicable in election cases specially for issuing direction for not administering oath upon the winning candidate as the same would be in violation of the statutory provisions that the winning candidate has to be sworn in and would start functioning for the welfare of the public at large.

In order to substantiate his submission that the provisions of Order XXXIX Rule 1 read with section 151 of the Code would also be applicable in election cases, learned counsel for the respondent no. 6 has placed reliance upon a decision of a Division Bench of this Court rendered in **Jageshwar Rai** (supra). The issue involved in the aforesaid case was as to whether the provisions of the Order VI Rule 17 of the Code would be applicable in the election petition and amendment in the election petition can be allowed? The Division Bench, after noticing the provisions of Rules 108, 110, 111 and 113 of the Rules as well as the provisions of the Statute, namely, Bihar Panchayat Election Rules, 1993 as well as Panchayat Election Rules, 1995, came to the conclusion that such



provisions would be available to the competent court for the purpose of amendment in the election petition. It is true that the election petitions are required to be brought on logical conclusion expeditiously, but, if the election petitioner himself wants to make amendment in the election petition and the proposed amendment is found to be tenable, then the court has power to allow the same and if the same are not tenable, then it has power to reject the same. However, it has been held that not only the principle but every provision prescribed in the Code would be applicable in election matter except those which are specifically barred by the provisions of the Act and the Rules under which the elections petitions were filed.

Such being the situation, now it has to be understood that in a given case, if required, even the provisions of Order XXXIX Rule 1 read with section 151 of the Code can also be applied in principle because there is no provision which specifically bars its application. However, it will give rise to another question as to whether in the situation like the case in hand, such provisions are required to be applied and order of restraintment would be required to be passed at all? The answer would have to be in negative. Election process is the most important part of our democratic system. The duration of Gram Panchayat is of five years unless it



is dissolved before that under the statutory provisions. The powers and duties of the Mukhiya are explained under section 17 of the Act whereas functions of Gram Panchayat are described under section 22 of the Act. Once elected, the Mukhiya and the Gram Panchayat start functioning and the Mukhiya discharges his duties and functions which are for the benefit of the people of the said Gram Panchayat. Therefor, such restraintment order directing the Returning Officer not to administer oath to the winning candidate, should not be passed unless it is apparent from the record that the election itself is void or election has been held *de hors* the statutory provisions. In the absence of the aforesaid, the court should not intervene in such matter even assuming that it is saddled with such power.

A Division Bench of this Court in **Kanti Devi v. The State Election Commissioner and others**(2013(1) PLJR 719) has opined as under:

“11. In the matters of election governed by statutes such as the Act, it is not permissible for a Tribunal created by the Act to travel beyond the provisions of the Act and statutory provisions to interfere with the election of a returned candidate. Statutes dealing with election have to be treated as a complete Code and it is not permissible to resort to general principles of fairness etc. to interfere with an election process or with the result of an election already held. No doubt, there have been some

judgments to the effect that if an election is held totally *de hors* the statutory provisions, it would be no election in the eyes of law and a Writ Court may interfere with such election. But that is not the case at hand.

It is crystal clear from the aforesaid decision that the election tribunal cannot travel beyond the provisions of the Act and the statutory provisions to intervene with the election of a returned candidate as it is not permissible to resort to general principles of fairness etc. to interfere with an election process or with the result of an election held unless the election is found to have been held totally *de hors* the statutory provisions and, as such, it would be no election in the eyes of law.

In the case in hand, the election petitioner has alleged that at the time of counting certain irregularities and bunglings have been committed and that have been detailed in the petition, in particular in paragraph 6 of the election petition, which has been appended as Annexure 6. The misconduct, which has been alleged, indicates that the votes of another candidate were also counted in the votes of the winning candidate, the seal of the Presiding Officer was so deep on about 150 ballot papers on its back which were appearing on the front of ballot papers and invalid votes were also counted in the votes of the winning candidate and several other irregularity. However, all those are allegations which are required



to be proved during the trial by leading evidence. Merely raising such allegation does not go to show that the election was conducted or even the counting was done *de hors* the statutory provisions. If the election petitioner finally succeeds in establishing that the election process suffers from such vice or misconduct which has materially affected the same and the court is satisfied then the election can be set aside but merely raising allegation in the election petition, nature of which may be grave, the same would not take place of evidence or material on which such step of restraining the Returning Officer from administering oath to the winning candidate could be taken.

Even assuming that the powers are there to pass such order, this is basic principle for granting temporary injunction that three ingredients, namely, prima facie case, balance of convenience and irreparable injury or loss have to be established in favour of the person seeking temporary injunction. Even if one ingredient is not established or found in favour of such person, restraintment order cannot be passed.

Coming to the order impugned, it appears that the court below has noticed the allegations made during the course of counting but, thereafter, it has completely failed to record as to how it considers that prima facie case has been made out by the election



petitioner rather it has gone to presume that prima facie case has been made out by the election petitioner as it has been mentioned on affidavit that malpractices were adopted during the course of election. It has not recorded any finding on the other ingredients like balance of convenience or irreparable loss. If a candidate is declared winner then the balance of convenience would always lay in his favour as otherwise the democratic process has to be stalled and the post of Mukhiya as well as Gram Panchayat would become defunct even after election having been held and people at large would be made to suffer. Similarly, it cannot be held that if the winning candidate is allowed to be administered oath it will cause irreparable injury upon the person seeking restraintment order for the reason that if he succeeds in establishing before the court concerned that malpractices were there and have materially affected the election then the election can be set aside. Without laying its hand upon the aforesaid two ingredients and completely misdirecting itself that the allegations made in the election petition have to be considered prima facie correct, the court below has proceeded to pass order restraining the winning candidate from subscribing oath, which was not required to be done at all.

In my considered opinion, the court below has committed serious error of jurisdiction in passing such order without



considering the basic principles for grant of temporary injunction and the situation in which such restraintment order would be passed. Prima facie it appears that the judicial officer concerned does not have even the basic knowledge of civil law. He has not stopped himself there but has proceeded further to personally write a letter to the Block Development Officer(Annexure 5/1) directing him not to administer oath upon the winning candidate and to maintain *status quo* till further notice. It is intriguing as to what was the occasion to write such letter to the Returning Officer and from where he derives such authority? Which statute confers upon him such power to write such letter personally after passing an order? Rightly or wrongly an order was passed by the court below and it was up to the successful party to communicate to the Block Development Officer after obtaining a certified copy of the order or though a certificate granted by the concerned Advocate. The aforesaid action raises so many doubts which are required to be cleared.

Accordingly, I hold the order impugned contained in Annexure 7, letter No. 852 dated 24.06.2016 written by the Block Development Officer, Athmalgola contained in Annexure 5 and the letter dated 24.06.2016 written by the court below contained in Annexure 5/1 not at all sustainable in law and they are hereby

quashed and set aside. The authority concerned would be free to proceed and conclude the democratic process by administering oath upon the winning candidate, however, court concerned would be at liberty to proceed with the election case concerned and conclude the same on its own merit and in accordance with law.

As a result, the writ petition stands allowed.

Before parting with the issue, this Court, in view of aforesaid discussion, 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, Athmalgola, a copy of which has been annexed as Annexure 5/1, so that it reaches this Court within a period of four weeks.

Put up this case after four weeks.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.08.2016
Transmission Date	NA