

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.912 of 2017
IN
Civil Writ Jurisdiction Case No. 7203 of 2017

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Smt. Kumkum Devi wife of Ravi Prasad resident of Mohalla Lallu Pokhar, Argara Road, P.S. - Kasim Bazar, District - Munger.

Respondent No.6.... Appellant

Versus

1. The State Election Commission, Bihar through Chief Election Commissioner, Bihar, Patna, Sone Bhawan, Birchand Patel Road, Patna.
2. The State of Bihar through the District Magistrate-cum-District Election Officer (Nagarpalika), Munger.
3. The Joint Secretary, State Election Commission, Bihar, Patna.
4. The District Election Officer (Nagarpalika)-cum-District Magistrate, Munger.
5. The Returning Officer, Nagar Nigam Munger-cum-Deputy Development Commissioner, Munger. Respondents **Respondents 1st set**
6. Smt. Ruma Raj wife of Subodh Kumar resident of village - Argara Road (Lallu Pokhar), P.S. - Kasim Bazar, District - Munger.

Petitioner Respondent 2nd set.

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Appearance :

For the Appellant/s : Mr. Abhoy Kumar Singh, Sr. Advocate
Mr. Sumit Kumar Singh, Advocate
For State Election Com. : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikesh, Advocate
For the State : Mr. Kaushal Kr.Jha-AAG8
For the pvt. Respondent : Mr. S.A.Narayan, Sr. Advocate
Mr. Shivendra Kr. Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 16-08-2017

The instant Letters Patent Appeal has been filed by the respondent-appellant against the order dated 19.5.2017 passed in CWJC No. 7203 of 2017 whereby the Writ Court allowed the writ application and set aside the certificate issued by the Returning Officer declaring the respondent-appellant elected for the post of Ward Councilor of Ward No. 32 in the District of Munger.



The writ petition was filed by one Smt. Ruma Raj, respondent No. 6 in the present appeal on 11.5.2017 for quashing the order dated 8.5.2017 passed by the State Election Commissioner, Bihar in Case No. 24 of 2017. The State Election Commissioner in purported exercise of power of superintendence under Rule 92 of the Bihar Municipal Election Rules, 2007 rejected the nomination paper of the writ petitioner for election on the post of Ward Councilor of Ward No. 32 in the District of Munger. Consequently, the Returning Officer issued certificate of election in favour of respondent No. 6 as after rejection of the nomination of the writ petitioner the respondent no. 6 was the only candidate in the election.

The Writ Court after hearing the parties has allowed the writ petition and set aside the order of the State Election Commissioner dated 8.5.2017 and all consequential orders including the declaration of election and issuance of certificate to the respondent No. 6 and thereafter issued direction to hold election accepting the nomination of the writ petitioner.

Mr. Abhoy Kumar Singh, learned Senior Advocate appearing on behalf of the appellant, referring to the judgment of the Division Bench in the case of **Bibha Devi & Anr. Vs. The State Election Commission (Panchayat) & Ors.: 2017(1) PLJR 225** submitted that the Writ Court committed error of jurisdiction in



deciding the writ application ignoring the constitutional inhibition under Article 243 ZG of the Constitution of India and heavily placed reliance on the judgment of the Division Bench in Bibha Devi's case (supra) wherein the Division Bench on consideration of the various judgments of Apex Court on the point held out that after commencement of the election process, election petition alone is the remedy and judicial review under Article 226 is impermissible.

Mr. Singh has submitted that on 19.04.2017 notification was issued for election of Councilors of Nagar Nigam Munger and 28.04.2017 was the date fixed for scrutiny of the nomination paper. The appellant filed the objection before the Returning Officer that there is suppression of material fact in the nomination paper submitted by Smt Ruma Raj, respondent No.6 who has not disclosed her assets in her declaration in the nomination paper. However the Returning Officer did not consider the objection of the appellant and allotted symbol despite objection and thereafter the appellant approached the State Election Commissioner against the inaction on the part of the Returning Officer in not considering the objection against the nomination of the writ petitioner. According to senior counsel the State Election Commissioner exercised power of superintendence under the scheme of Article 243 ZA of the Constitution and after hearing the parties rejected the nomination of the writ petitioner vide order



dated 8.5.2017 and thereafter the Returning Officer declared the appellant as elected being the only candidate with valid nomination in the election.

Shri Singh referring to the constitutional provision under Article 243 ZG submitted that once rightly or wrongly the Returning Officer issued certificate of election of the appellant, the Writ Court was precluded from exercising jurisdiction in view of the non obstante clause under Article 243 ZG which creates complete bar to interference by Court in election matter. For ready reference Article 243 ZG is reproduced hereinbelow :-

“243-ZG. Bar to interference by Courts in electoral matters.-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243-ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

Mr. Singh placing reliance on the judgment in the case of **Bibha Devi** (supra) wherein the Division Bench has examined the issue of the election of Panchayat and held out with reference to



the various judgments of the Apex Court including the Constitution Bench judgment in the case of **N.P.Ponnuswami Vs. Returning Officer: AIR 1952 SC 64** and various other judgment including the case of **Mohindra Singh Gill and Anr Vs. The Chief Election Commissioner, New Delhi & ors.: AIR 1978 SC 851 =(1978) 1 SCC 405** and after considering the constitutional scheme under Article 329(b) and identical provisions contained in Article 2430 with regard to constitutional bar in the matter of Panchayat election on scrutiny by Court in election matter, held out that in view of the constitution Bench Judgment in **N.P.Ponnuswami's case (supra)** and **Mahendra Singh Gill's case (supra)** the jurisdiction conferred to the High Court under Article 226 stands ousted. Mr. Singh submitted that the Apex Court has explained the scheme of election in the cases of **N.P.Ponnuswami (supra)** and **Mahendra Singh Gill (supra)**.

Mr. Singh referring to paragraphs 28 and 29 of the judgment in the case of **Mahendra Singh Gill (supra)** submitted that scrutiny of nomination paper is only a stage though an important stage in the election process but it is one essential duties to be performed that the election could be completed and by no stretch of reasoning be described as questioning the election. He submitted that it is not calling in question and as such the scrutiny of nomination paper by the Returning Officer does not fall within



the ambit of call in question as constitutional bar.

Mr. Singh submitted with reference to the Bihar Municipal Election Rules, 2007 that in terms of Rule 46 the Returning Officer was obliged to scrutinize the nomination paper of the candidate and the Returning Officer was obliged to reject the nomination if the nomination paper is not in order in terms of Rule 46. He also submitted that the recent trend of the Apex Court judgment is towards disclosure of assets in the matter of election. He placed reliance on the judgment of the Apex Court in the case of **Union of India Vs. Association for Democratic Reforms : (2002) 5 SCC 294** and also the judgment of the Supreme Court in the case of **Krishnamoorthy Vs. Sivakumar & Ors. : (2015) 3 SCC 467** to highlight the importance of disclosure of assets in the nomination paper and resultant effect of concealment of material fact and suppression of assets as it is crying need of the democracy that the candidate must produce full disclosure in the nomination paper.

Mr. Singh referring to the date of events submitted that once the Returning Officer rightly or wrongly declared the appellant as elected and issued certificate the only remedy in view of the settled principles of law and in view of the constitutional obligation under Article 243 ZG was to file election petition and petition under Article 226 of the Constitution was not maintainable.



He submitted that the State Election Commissioner exercised power of superintendence which is akin to Article 227 of the Constitution and as such it has all the necessary power of certification and rectifying the error committed by the Returning Officer. Mr. Singh has placed reliance on the judgment of the Apex Court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil (2010) 8 SCC 329** in paras 35 and 37 to buttress his point that the State Election Commissioner has the necessary power of superintendence to rectify mistake committed by the Returning Officer. However, Mr. Singh with all fairness admitted that the judgment of Division Bench in the case of reported in **2013(2) PLJR 114** is against him. The power of the High Court under Article 227 of the Constitution is plenary whereas the power of superintendence under Rule 92 is limited and cannot be equated with the power of superintendence exercised by the High Court under Article 227 of the Constitution and as such the judgment in the case of **Shalini Shyam Shetty** (supra) is not applicable in this case.

Mr. Shashi Anugrah Narayan, Senior Advocate appearing on behalf of the respondent No. 6 has submitted that the Writ Court has rightly exercised jurisdiction and interfered with the totally without jurisdiction and arbitrary action of the State Election Commissioner. He submitted that the decision of the Returning



Officer is final under Rule 47 of the Bihar Municipal Election Rules. Rule 47 is quoted for reference.

“47. Decision of Returning Officer to be final.-
The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected or is accepted after objection has been taken to its validity, shall record in writing a brief statement of his reason for such rejection or acceptance, and the decision of the Returning Officer shall be final.”

Since the decision of the Returning Officer rejecting or accepting the nomination is final under the rule as such the State Election Commissioner has absolutely no jurisdiction to interfere with the power exercised by the Returning Officer in the matter of rejection or acceptance of the nomination paper. He placed reliance on the Divisional Bench judgment in the case of **Prafulla Chandra Sudhanshu Vs. The State Election Commission (Municipality): 2013 (2) PLJR 114**. In the aforesaid case the State Election Commissioner in purported exercise of power under Rule 92 of the Bihar Municipal Election Rules has issued direction to the Returning Officer to reconsider the nomination submitted by the appellant. The Division Bench on scrutiny of Rules 46, 47 and 51 of the Bihar Municipal Election Rules and the general power of



superintendence under Rule 92 of the Bihar Municipal Rules held out that the power under Rule 92 of 2007 Rules is for issuing general direction for efficient conduct of the election and it cannot be used for issuing the instruction in individual cases. The Division Bench held out that Rule 92 does not confer power upon the State Election Commissioner to issue direction to the Returning Officer contrary to statutory provisions to accept or reject nomination in a particular case. Relying upon the judgment in **Prafulla Chandra Sudhanshu** case (supra). Mr. Narayan submitted that the rejection of nomination by the State Election Commissioner is totally without jurisdiction and as nullity in the eye of law. Mr. Narayan submitted that the Election Commissioner has absolutely no jurisdiction to set aside the nomination. The Election Commissioner under the Act has no jurisdiction to sit in appeal against the decision of the Returning Officer in the matter of acceptance or rejection of the nomination paper as under Rule 47 the decision of the Returning Officer in the matter of acceptance or rejection of nomination is final. Mr. Narayan submitted that once the Returning Officer rejected the objection and accepted the nomination paper of the writ petitioner, the Election Commissioner has absolutely no jurisdiction to entertain objection and set aside the nomination of the writ petitioner. The power exercised by the Election Commissioner is alien to the scheme of the Bihar



Municipal Election Rules, 2007 and considering the fact that without jurisdiction power was exercised by the Election Commissioner, the Writ Court has rightly exercised the power of judicial review under Article 226 of the Constitution and committed no illegality. The judgment of the Writ Court is well founded and based on sound principle of law.

Mr. Narayan adopting the argument of Mr. Singh submitted that once the nomination was accepted the only course open was to challenge the result of the election in properly constituted election petition under the scheme of the Election rules. He submitted with reference to Article 243ZA that the Election Commission has exercised extra constitutional jurisdiction impermissible under the Constitution as well as Bihar Municipal Election Rules and as such the Writ Court has committed no illegality in exercising power of judicial review under Article 226 of the Constitution of India.

Mr. Narayan submitted that Rule 92 of the Bihar Municipal Election Rule cannot limit the power of the Returning Officer under Rule 47 of the Bihar Municipal Acts and Rules.

Mr. Amit Shrivastava, learned counsel appearing for the State Election Commissioner fairly conceded that in view of the Division Bench judgment in the case of **Prafulla Chandra Sudhanshu Vs. The State Election Commission (Municipality):**



2013 (2) PLJR 114, the State Election Commissioner has absolutely no jurisdiction and as such the action of the State Election Commissioner rejecting the nomination of the writ petitioner was without jurisdiction.

Having heard the parties and considering the rival submissions and the peculiar facts and circumstances of the case, we do not find any error in the exercise of jurisdiction by the Writ Court. The Writ Court on consideration of the scheme of the Bihar Municipal Election Acts and Rules and the Division Bench judgment in the case of **Prafulla Chandra Sudhanshu** (supra) has rightly held out that the State Election Commissioner has no jurisdiction to interfere with the final decision of the Returning Officer accepting or rejecting the nomination. The submission of Mr. Abhoy Kumar Singh that the Election Commissioner has passed the order after hearing the parties does not cut much ice in view of the fact that if the Election Commissioner has no jurisdiction to sit in appeal against the decision of the Returning Officer under Rule 47 of the Bihar Municipal Election Rules, 2007 then submission of the jurisdiction voluntarily or involuntarily by the parties will not confer jurisdiction to the Election commissioner, the submission of Mr. Singh that after the decision of the state Election Commissioner, the Returning Officer has declared the appellant elected and issued certificate, does not clothe



seal of validity to the election as declaration of election of the appellant on the basis of the rejection of the nomination of the writ petitioner by the Election Commissioner vide order dated 8.5.2017 itself is void ab initio and the resultant action of declaring the election of the appellant and issuing certificate is nullity in the eye of law and the Writ Court has rightly set at not the entire consequential action including the declaration of election of the appellant and issuance of certificate to that effect.

It may not be out of place to mention here that after the order of the Writ Court the election was held and the appellant also participated in the election and the writ petitioner won the election and the appellant lost the election during the pendency of the appeal and once the election was held and the appellant who participated in the election and took chance, cannot be allowed to turn around and question the holding of the election in terms of the direction of the Writ Court.

We find substance in the submission of Mr. Narayan that once the appellant participated in the election and lost the election the only remedy is to challenge the election, if otherwise permissible in law, by way of a duly constituted election petition under the Scheme of Bihar Municipal Election Rules.

We also find that the Division Bench judgment in the case of **Prafulla Chandra Sudhanshu** (supra) is based on sound



appreciation of law and as such we see no reason to take a discordant view on the power of State Election Commissioner in the matter of interference with the final decision of the Returning Officer accepting or rejecting the nomination.

The appeal lacks substance and is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

S.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
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