

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9362 of 2017

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Ranglal Rai, Son of Nathuni Rai, Resident of Village and P.O. Agauthar Nanda, P.S. Isuapur, District- Saran at Chapra, presently Mukhia of Gram Panchayat Raj, Agauthar Sunder, Block- Isuapur, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Saran at Chapra.
2. The District Magistrate, Saran at Chapra, District- Saran at Chapra.
3. Alok Kumar Pandey, Son of Late Anil Kumar Pandey, Resident of Village and P.O. Agauthar Nanda, P.S. Isuapur, District- Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Ranjan, Advocate
For the State : Mr. Prabhat Ranjan, AC to GP 6
For the Respondent No. 3 : Mr. Suresh Pd. Singh No. 1, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 17-08-2017

Heard learned counsel for the petitioner, State and respondent no. 3, who has *suo motu* appeared.

2. The petitioner has moved the Court for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 22.05.2017 passed by the learned Munsif 1st, Chapra in Election 4 of 2016, whereby and where under he has been pleased to take into exhibit all documents filed by the Respondent no. 3 along with*



his application dated 24.04.2017 though they were not the public document and their original is already there in the custody of District Magistrate-cum- District Election Officer, Saran at Chapra.

(II) For a declaration that in view of the provisions contained under Section 65 of the Evidence Act, 1872, the learned Munsif was not justified to exhibit the attested copies of the documents which are not even the public documents without there being any evidence before him that the original has been lost.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The contention of the petitioner is that in Election Case No. 4 of 2016, which was filed by the respondent no. 3, certified copies of certain documents have been marked as Exhibit, despite objection by the petitioner that it was not in accordance with the provisions of the Indian Evidence Act, 1872, since the originals were available and could very well have been called for.

4. Learned counsel for the petitioner submitted that the law requires that any secondary evidence, including certified copy can be taken as evidence and marked as Exhibit only when certain conditions precedent are fulfilled; one being that the original is



either destroyed or not available or immovable. It was submitted that in the present case, the original nomination papers were there and the certified copies of the same, which was filed by the respondent no. 3, were sought to be made Exhibits and the same was objected to by the petitioner, with a prayer to the Court concerned that the original be called for, the same has been rejected, which is impermissible.

5. Learned counsel for the respondent no. 3 submitted that the certified copy is also the official copy of the original and once the same is already there, it would only be wastage of time of the Court to call for the original.

6. Having considered the rival contentions, the Court finds that the marking of Exhibit of the certified copies of the nomination papers cannot be sustained. The law, as has rightly been pointed out by learned counsel for the petitioner, requires that when the original evidence/document is available, the same has to be called for before the Court and then only it can be marked as Exhibit. In the present case, certified copies of the nomination papers, that too filed by the respondent no. 3 along with the plaint of the election case, could not have been marked as Exhibit without there being a finding that the same could not be called for due to any reason.



7. Accordingly, the order dated 22.05.2017 passed by the Munsif 1st, Chapra in Election Case No. 4 of 2016 stands quashed only to the extent it relates to Exhibits 1, 2 and 3, which are part of the nomination papers. The said documents which had been marked as Exhibits 1, 2 and 3 shall now no more be Exhibit in the said case. However, the same can be made Exhibits in accordance with the requirements of law. If prayer is made for making them Exhibits, the same shall be considered in accordance with law, without being prejudiced by the present order.

8. Before parting, the Court would only observe that in election matters any petition challenging the same has to be considered expeditiously and the Court concerned shall be conscious of this aspect.

(Ahsanuddin Amanullah, J)

Anjani/-

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