

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1482 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 10107 of 2016**

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Kiran Devi, wife of Sri Rajendra Yadav, resident of village- Bairbigaha, P.O. Karpi,
P.S. Karpi, District-Arwal.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department,
Government of Bihar, Patna.
2. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel
Patha, Patna, through the State Election Commissioner.
3. The Secretary, the State Election Commission(Panchayat), Sone Bhawan,
Birchand Patel Path, Patna.
4. The Divisional Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal, District-Arwal.
6. The Deputy Development Commissioner-cum-Chief Executive Officer, Zila
Parishad, District-Arwal.
7. Ranjay Kumar, Son of Sri Jhalak Singh, resident of village-Dangra Ahar, P.O.
and P.S. Arwal, District-Arwal. Presently Chairman, Zila Parishad, Arwal,
District-Arwal.

.... Respondents

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Appearance :

For the Appellant :Mr. S.B.K. Mangalam, Advocate and Mrs.
Anita Kumari, Advocate.

For the Respondent Nos. 2 & 3: M/S.Amit Srivastva and Mr. Sanjeev
Nikesh, Advocates.

For the State : Mr. Vinay Kumar Pandey, A.C. to G.A.3.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE

Date: 18-01-2017

The challenge in the present Letters Patent Appeal is to an



order passed by the learned Single Bench of this Court on 05.07.2016 whereby, challenge to the election of respondent no. 7 as Chairman of Zila Parishad, Arwal, remained unsuccessful.

The appellant is an elected member of the Zila Parishad and was a candidate for the post of Chairman of Zila Parishad. There were 09 voters for election to the post of Chairman. In the elections held, 08 votes were found valid whereas 01 vote was declared invalid as it contained the name of the appellant. After counting of remaining 8 votes, both candidates obtained 4 votes each. Since, the two candidates secured equal number of votes, therefore, in terms of Rule 98 of Bihar Panchayat Election Rules, 2006, (for short, 'the Rules') a decision by draw of lots is contemplated. In such draw of lots, the respondent no. 7 was declared elected as Chairman of the Zila Parishad.

The appellant challenged the declaration of result of respondent no. 7, by way of writ application before this Court which has been dismissed on the ground that the writing of her name on the ballot paper would be sufficient to declare it as an invalid vote as it leads to identification of the voter. The argument of Learned Counsel for the appellant is that the writing of the name of candidate does not disclose identity of the voter as such name is already stands printed on the ballot paper.

We do not find any merit in the argument of the



learned counsel for the appellant. Rule 96 of the Rules provides as to when the ballot paper shall be treated as invalid. Rule 96 reads as under:-

“96. Invalid Votes.- A ballot paper shall be treated as invalid if:-

- (a) it bears the signature of a member or there is any such visible word which may lead to the identification of the voter; or
- (b) the cross(x) mark has been made against the name of more than one candidate; or
- (c) the mark has been made in such a manner that it can not be ascertained as to which candidate the vote has been cast; or
- (d) no cross mark has been made on it; or
- (e) it does not bear the signature of the Presiding Officer.”

The expression, “*Member of Gram Panchayat*” has been defined in Section 2(q) of Bihar Panchayat Raj Act, 2006 which reads as under:-

“2(q). “*Member of Gram Panchayat*” means an elected member of that Panchayat.”

We have heard learned Counsel for the parties and find no merit in the present appeal. The appellant as an elected member of the Zila Parishad is a member as defined under the Act. The writing of the name of the member entails the vote to be invalid in terms of first part of clause of Rule 96 of the Rules which is to the effect that “it bears the signature of a member”. Therefore, writing of the name



by a member results into invalid vote. The vote has been rightly declared invalid even in terms of second part of Clause (a) of Rule 96, which is to the effect that “there is any such visible word which may lead to the identification of the voter”. The writing of name is an visible act sufficient to identify the voter, therefore, such vote has been rightly declared invalid. Since disqualification is in terms of the Rule 96, we do not find any error in the order of the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

Still further, the appellant has participated in the process of draw of lots after it was found that both candidates have obtained equal number of votes. Thus after participating in the process, but after having lost, the appellant cannot be permitted to dispute the declaration of vote as invalid.

Consequently, the Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-Amit

AFR/NAFR	AFR
CAV DATE	NA
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