

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6095 of 2017

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Rajendra Prasad, S/o Late Mathura Prasad, Resident of Village- Mangar Tola,
P.S.Akorhi Gola, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Rohtas.
2. The Sub Divisional Officer, Dehri, Rohtas.
3. The Block Development Officer, Akorhi Gola, District- Rohtas.
4. The Secretary, Bihar Election Commission, Bailey Road, Patna.
5. The Deputy Secretary, Bihar Election Commission, Bailey Road, Patna.
6. Smt. Kiran Devi, W/o Shri Chhotan Singh, C/o Shri Sheovachan Ram Mukhiya,
Gram Panchayat Pakadiya, Block- Akohri Gola, P.S. Akodi Gola, District-
Rohtas.
7. Late Tetari Devi, W/o Shri Sheovachan Ram, resident of Village- Mahuari,
Post- Chap, P.S.- Akorhi Gola, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Shrivastava, Mr. Rakesh Kumar Shrivastava and Mr. Ramesh Kumar Singh, Advocates
For the SEC	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates
For the State	:	Mr. K. K. Jha, A.A.G. 8 Mr. Shankar Kumar Choudhary, A.C. to A.A.G. 8
For the Respondent & 7 :	:	Mr. K. N. Choubey, Sr. Advocate Ms. Ritu Priyadarshini, Mr. Prashant Kumar, Mr. Animesh Kumar, Mr. Dineshwar Pandey and Mr. Ashok Kumar Garg, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-07-2017

Heard Mr. Shri Prakash Shrivastava along with Mr.
Rakesh Kumar Shrivastava, learned counsel for the petitioner; Mr.
K.K. Jha, learned AAG-8 for the State; Mr. Amit Shrivastava along
with Mr. Girish Pandey, learned counsel for the respondents no. 4
and 5 and Mr. K. N. Choubey, learned senior along with Ms. Ritu



Priyadarshini, learned counsel for the respondents no. 6 and 7.

2. Learned counsel for the petitioner is permitted to add the name of the husband of the respondent no. 6 in the cause title. Let the same be done during the course of day.

3. The petitioner has moved the Court seeking the following reliefs:

“(i) For commanding the respondents to remove the private respondent no. 6 from the post of Mukhiya under Gram Panchayat Pakdiya, Block Akohri Gola, Who has been elected in the election held on 20.05.2016 and result was declared on 30.06.2016 in view of misleading facts given in nomination from, BIO- Date and lodging a criminal case against her or any direction accordance with law.

(ii) For cancelling the result dated 03.06.2016, by which the Block Development Officer, Akorhi Gola, District- Rohtas cum Returning Officer, has declared the respondent no. 6 as Mukhiya, Gram Panchayat- Pakadiya Block Akorhi Gola, District- Rohtas on the basis of highest vote caste in favour of her.

(iii) For direction to result/Certificate (Mukhiya election 2016) dated 03.06.2016 is null and void in view of the private respondent had given nomination on the name of died person and different name and after enquiry a police case has been instituted.

(iv) For granting relief or reliefs on which the petitioner is entitled on the basis of facts or law both.”

4. The short relevant facts in the case are that the respondent no. 6 is said to have personated as respondent no. 7 though without there being anything on paper to justify such



transition and has fought the election for the post of Mukhiya of Gram Panchayat, Pakadiya in Block-Akohri Gola in the district of Rohtas, in the capacity and under the identity of respondent no. 7, which has been challenged by the petitioner.

5. After hearing the parties at length, it transpires that though admittedly the respondent no. 6 was Kiran Devi wife of Chhotan Singh, living in the same village belonging to the same reserved category as late Tetari Devi, who was the first wife of Sheovachan Ram but later on she married Sheovachan Ram and was also elected on the changed name Tetari Devi, which is reflected from the Voter Identity Card as well as the Aadhar Card issued in her favour in which the name is Tetari Devi, wife of Sheovachan Ram but the photograph is that of Smt. Kiran Devi i.e., respondent no. 6. Thus, for all practical purposes, the identity of respondent no. 6/7, as far as identifying her as a particular lady by the electorate/voter was never in doubt nor there was any confusion to who she was. Here, there is a technical issue, as to whether the person known to the voters is Kiran Devi wife of Chhotan Singh or Tetari Devi wife of Sheovachan Ram. Even in the form filled up for election, there being no column for the name of the spouse, it has only been written Tetari Devi, without the name of the spouse Sheovachan Ram. From the picture which emerges there are two aspects of the matter. One purely



technical and the other moral. Purely on the basis of law, the person, who has been elected has sufficient documents to show that her name is Tetari Devi wife of Sheovachan Ram. There has also not been misrepresentation of any sort in the election papers filled up by her and there is also no dispute with regard to she being identified as who she is without there being any allegation of she personating any other lady. This being the position, when the law does not prohibit a person to change his/her name or keep a name similar to any other person, Kiran Devi changing her name to Tetari Devi cannot be objected to in law. At this stage, it would be useful to indicate that there is no strict procedure prescribed in law which has to be followed for such change of name and there are various modes. The other aspect of the matter, being moral, is as to whether Kiran Devi had divorced her first husband and then married Sheovachan Ram or not. Law relating to elections are governed by and are totally statutory and cannot be asserted as a fundamental right by any person. Thus, under the statute, the respondent no. 7 having won the election by majority of the votes polled in her favour, in the considered opinion of the Court, such desire/will of the electorate needs to be respected more so, for the reason that there is no allegation that the respondent no. 7 was not known as the lady she is actually is by the persons of the village or she does not belong to the



reserved category from which she has won.

6. In such view of the matter, the Court rather than dismissing the case on merits, deems it more appropriate not to interfere in the matter in its prerogative, extraordinary and discretionary writ jurisdiction.

7. Accordingly, the writ petition stands disposed off.

8. However, in view of the larger picture which has emerged, in order to bring greater accountability and responsibility in the sphere and domain of public life especially where people contest elections, the petitioner, if advised, may bring actionable claim against the respondent(s) no. 6/7, with regard to her not having legally divorced the first husband i.e., Chhotan Singh and further not having changed her name in a legal way.

9. The interim order dated 03.05.2017 stands vacated.

(Ahsanuddin Amanullah, J.)

P. Kumar

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