

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16446 of 2016

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Prateema Devi, W/o Prahlad Sharma, resident of Village- Nardidih, P.S.-
Nardiganj, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. The State Election Commission, through its Chairman, Bihar, Patna.
3. The Secretary, State Election Commission, Bihar, Patna.
4. The Collector-cum-District Returning Officer, District- Nawada.
5. The Block Development Officer-cum- Block Returning Officer, Nardiganj
Block, District- Nawada.
6. The Assistant, Returning Officer, Nardiganj Block, District- Nawada.
7. Sushma Devi, W/o Ramashish Pandit, resident of Village- Nardidih, P.S.-
Nardiganj, District- Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Lilawati Singh and Ms. Manisha Prakash, Advocates
For the State	:	Mr. Pratik Kumar Sinha, AC to GA 10
For the SEC	:	Mr. Amit Shrivastava with Mr. Sanjeev Nikesh, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 07-08-2017

Heard learned counsel for the petitioner, State and Mr.
Amit Shrivastava, assisted by Mr. Sanjeev Nikesh, for the State
Election Commission.

2. The petitioner had moved the Court and her
contention was very simple. She had taken the plea that after counting



of votes for the post of Ward Member (Panchayat Member) of Ward No. 7 of Nardiganj Gram Panchayat under Block Nardiganj in the district of Nawada, she had polled 218 valid votes whereas the respondent no. 7 had obtained only 94 valid votes. However, when results were declared it was shown vice versa i.e., the respondent no. 7 was declared elected showing that she had obtained 218 valid votes whereas the petitioner was shown to have obtained 94 valid votes in the counting exercise conducted by the Senior Deputy Collector, Nawada in terms of office order contained in Memo No. 1043 dated 19.05.2016 of the District Election Officer (Panchayat)-cum- District Magistrate, Nawada, copy of which has been made Annexure-A to the counter affidavit filed on behalf of respondents no. 4 to 6. This was in the background of the fact that against respondent no. 5, who was the Returning Officer, there were allegations and thus under the directions of the State Election Commission, the Senior Deputy Collector was authorized to replace the Block Development Officer, who was otherwise the Returning Officer for the said election for the purpose of counting of votes. By order dated 14.07.2017, on the basis of contention of learned counsel for the petitioner made on oath regarding such act and also taking into consideration that the parties or their representatives are present at the time of counting, the Court had called upon the respondent no. 4 to himself re-verify the ballots



with regard to the number of votes polled by the petitioner.

3. In terms of the said exercise, a report has been submitted in a sealed cover, by learned counsel for the State Election Commission, which reveals that the District Magistrate under his chairmanship had constituted a four-member Committee, including the District Panchayat Raj Officer, District Treasury Officer and the Block Development Officer-cum-Returning officer (Panchayat) and both the petitioner and the respondent no. 7 were also called and in their presence when it was re-verified, it transpired that the allegation levelled by the writ petitioner was true and that she had obtained 218 valid votes whereas the respondent no. 7 only 94 valid votes.

4. Despite valid service of notice on the respondent no. 7, there is no representation on her behalf before the Court today.

5. In view of the fact that upon re-verification, the illegality of the Returning Officer (Respondent No. 8) being found true, the Court has no hesitation to cancel the certificate of the election issued in favour of the respondent no. 7. Accordingly, the respondent no. 5 is directed to issue a fresh certificate of the election in favour of the petitioner forthwith.

6. The Court would like to observe that the present order has been passed in the peculiar facts and circumstances of the case when before the Court a blatant and apparent fraud was alleged which



did not involve any fresh exercise but only a verification of the facts. Thus, in *stricto sensu* terms, the decision of a Division Bench of this Court in the case of **Bibha Devi vs. State Election Commission (Panchayat)** reported as **2017 (1) PLJR 225** which had indicated that once after the declaration of result and certificate issued in favour of any candidate, the only remedy left would be to file an election dispute case, would not be attracted in the peculiar facts and circumstances of the present case.

7. Upon query of the Court, Mr. Amit Shrivastava, learned counsel for the State Election Commission submitted that the matter will be taken seriously by the Commission as it is nothing short of a blatant fraud on the system and abuse of the authority and trust vested in official(s), who are entrusted to conduct election in a free and fair manner. He assured the Court that strict action would be taken in right earnest so that in future it acts as a deterrent for any official to subvert the process of democracy in any manner, muchless the manner in which the person(s) have acted in the present case.

8. In view of the aforesaid, the Court does not feel that there is necessity for it to interfere directly in the matter. It is observed that the State Election Commission would also consider all aspects of the matter and also take into consideration the role of all officials who were party to the counting and declaring respondent no. 7 as the



winner. Learned counsel assured that the State Election Commission will take action against all concerned who were responsible for declaring the result in favour of the respondent no. 7 which was under challenge in the present writ petition and has now been set aside and that such action shall be initiated and taken to its logical conclusion expeditiously. The petitioner shall be free to file representation before the State Election Commission to assist it with regard to the role of person(s) who might be responsible for this, which shall be considered by the State Election Commission.

9. Learned counsel for the State has also taken a stand and assured the Court that whatever follow-up action is required by the State, in terms of the order/recommendation of the State Election Commission, the same shall be taken promptly.

10. The writ petition stands allowed in the aforementioned terms.

11. The report submitted in original before the Court in a sealed cover has been opened and the same is being returned to learned counsel for the State Election Commission for being returned to the authorities to be kept in the original records of the case.

(Ahsanuddin Amanullah, J)

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