

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9220 of 2016

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Sukati, Son of Sadique Mian, Resident of Village- Kanchanpur, Kuer Toli, P.O., P.S.
and Block- Manjhi, District- Saran at Chapra.

..... Petitioner

VERSUS

1. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path,
Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Panchayat),
Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission (Panchayat), Sone Bhawan,
Birchand Patel Path, Patna.
4. The District Election Officer (Panchayat), Saran at Chapra, District- Saran at
Chapra.
5. The Returning Officer (Panchayat Election), Manjhi Block, District- Saran at
Chapra.
6. Akhtar Ali, Son of Late Jam Mohammad, Resident of Village- Manjhi Mali Tola,
P.O., P.S. and Block- Manjhi, District- Saran at Chapra.
7. Navratan Kumar Prasad, Son of Rajaram Prasad, Resident of Village- Chaubah
Asthan, P.O. and P.S. Manjhi, District- Saran at Chapra.
8. Anil Sharma, Son of Sakaldeo Sharma, Resident of Village- Uttar Tola, P.O. and
P.S. Manjhi, District- Saran at Chapra.
9. Ekbal Ahmad, Son of Jafar Imam, Resident of Village- Dharni Das Ke Mathiya,
P.O. and P.S. Manjhi, District- Saran at Chapra.
10. Akhtari, Wife of Shamshad Ali, Resident of Village- Takiya, P.O. and P.S.
Manjhi, District- Saran at Chapra.



11. Mohammad Daud, Son of Md. Shahid, Resident of Village- Mali Tola, P.O. and P.S. Manjhi, District- Saran at Chapra.
12. Madan Nut, Son of Late Lal Bahadur Nut, Resident of Village- Takiya, P.O. and P.S. Manjhi, District- Saran at Chapra.
13. Shivdas Sharma, Son of Late Sakaldeo Sharma, Resident of Village- Godha, P.O. and P.S. Manjhi, District- Saran at Chapra.
14. Dwarika Sharma, Son of Sundar Lal Sharma, Resident of Village- Kanchanpur, P.O. and P.S. Manjhi, District- Saran at Chapra.
15. Nasim Ahmad, Son of Md. Sadique Hussain, Resident of Village-Mali Tola, P.O. and P.S. Manjhi, District- Saran at Chapra.
16. Mojammil Hussain, Son of Nasim Ahmed, Resident of Village- Mali Tola, P.O. and P.S. Manjhi, District- Saran at Chapra.

..... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam and Mr. Ravi Ranjan, Advocates
For the SEC	:	Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, Advocates
For the Respondent No. 6	:	Mr. Harish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-08-2017

Heard learned counsel for the petitioner; State Election Commission; respondent no. 6. Though the private respondents no. 7 to 16 were duly noticed and served, nobody appeared on their behalf when the case was heard.

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 letter dated 28.05.2016 issued by the Respondent no. 3 and contained in his letter no. 4846 dated 28.05.2016, whereby and where under the Respondent no. 3 has been pleased to direct the Respondent no. 4 to declare the result of election of Gram Panchayat Raj, Manjhi East without obtaining the permission of the Commission on the ground that a complaint has been filed by the Respondent no. 6 that since the writ petitioner was not a voter in the Gram Panchayat on the date he had filed his nomination, the Returning Officer had committed an error while accepting his nomination on the date of scrutiny.*

(II) For a declaration that if improper rejection of nomination of a candidate is also a ground under Section 139 of the Bihar Panchayat Raj Act, 2006 for declaring the election void, the State Election Commission has no jurisdiction to interfere in the matter on this ground after the entire process of election has been exhausted without any complaint.

*(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, Commanding and directing the Respondent Authorities to declare the result of election for the post of Mukhiya of Gram Panchayat Raj, Manjhi East in which the petitioner has already defeated the Respondent no. 6 by the margin of 393 votes.*

(IV) 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 controversy is that the petitioner was not the person who he claims to be and rather another person and on the ground of such impersonation, he was not allowed to cast his vote for the said election. Thereafter on the very next date, a complaint was



filed by the respondent no. 6 before the State Election Commission with regard to such misconduct, misrepresentation and fraud played on the part of the petitioner. The respondent no. 6 was also a contestant for the said post. The State Election Commission by order communicated in the letter of the Secretary dated 28.05.2016, copy of which is Annexure-7 to the writ application, has rejected the candidature of the petitioner for the said post. The same is impugned in the present writ application.

4. Learned counsel for the petitioner submitted that his solitary ground of challenge to such order is the jurisdiction of the State Election Commission to intervene at a stage where nomination has been accepted and election also held. It was submitted that the power of the Election Commission is only after the election has been held and result declared under Section 136(2) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'), or in the alternative, filing of an election petition before the Prescribed Authority under the Act. It was submitted that such original power is not available to the State Election Commission to intervene, especially at the stage at which intervention has been made. For such proposition, he referred to a Division Bench judgment of this Court in the case of **Prafful Chandra Sudhanshu vs. State Election Commission (Municipality)** reported as **2013 (2)**



PLJR 114 (D.B.) as well as the order of the Hon'ble Supreme Court in the case of **N. P. Ponnuswami v. Returning Officer, Namakkal** reported as **A.I.R. (39) 1952 SCC 64**. Learned counsel submitted that the order impugned is based on enquiry made, on behalf of the State Election Commission, by the authorities, to which the petitioner was not a party and even while passing the order impugned, which is final in nature, no notice was given to the petitioner.

5. Learned counsel for the State Election Commission submitted that the contention of the petitioner is misconceived. It was submitted that under the constitutional as well as statutory framework, the State Election Commission has got overall power of superintendence in the conduct of election and has also got plenary power. It was submitted that when a blatant case of impersonation, as in the present case, was brought to its notice, and which was substantiated, it would have been a travesty if the State Election Commission had shut its eyes and waited for the fraud to be perpetuated and taken to its logical conclusion, by permitting a person whose name does not find place in the voter list, to be elected to the post. It was submitted that the State Election Commission is not only empowered, but rather duty bound, to act in the matter which it has done. For such proposition, learned counsel



has relied on the decisions of the Hon'ble Supreme Court in the cases of **Neeraj Singh vs. State Election Commission** reported as **2012 (1) PLJR 516**; **K. Venkatachalam v. A. Swamickan** reported as **(1999) 4 SCC 526**; **Mohinder Singh v. Chief Election Commr.** reported as **A.I.R. 1978 SC 851**; **Union of India v. Association for Democratic Reforms** reported as **A.I.R. 2002 SC 2112**; **Kishansing Tomar v. Municipal Corpn. of the city of Ahmedabad** reported as **(2006) 8 SCC 352**; **Indian Bank v. M/s. Satyam Fibres (India) Pvt. Ltd.** reported as **A.I.R. 1996 S.C.W. 3228 Vol.4**; **Union of India v. Subodh Kumar** reported as **2003 (4) PLJR 208**; **Rita Mishra v. Director, Primary Education, Bihar (FB)** reported as **A.I.R. 1988 Patna 26 (F.B.)**; **Meghmala v. G. Narasimha Reddy** reported as **(2010) 3 SCC (Cri) 878**; **State of Bihar Vs. Shrawan Kumar Thapa** reported as **2015 (1) BBCJ V-612 (DB)**; **Prafful Chandra Sudhanshu vs. State Election Commission (Municipality)** reported as **2013 (2) PLJR 114 (D.B.)**; **N. P. Ponnuswami v. Returning Officer, Namakkal** reported as **A.I.R. (39) 1952 SCC 64** and in the case of **Subodh Kumar Verma @ Subodh Verma vs. The State Election Commission, Bihar and Ors.** in **C.W.J.C. No. 7202 of 2017**.

6. Learned counsel submitted that as far as the case of **Prafful Chandra Sudhanshu** (supra) is concerned, the ratio is not



applicable in the facts and circumstances of the present case for the reason that there are no *pari materia* provision in the Act akin to Rule 47 of the Bihar Municipal Election Rules, 2007 as well as the fact that in the reported case, the question of fraud was not involved. As far as the case of **N. P. Ponnuswami** (supra) is concerned, it was submitted that it rather supports the stand of the State Election Commission with regard to it having plenary power and further that the said judgment has no application in the present case as it was a case of rejection of nomination of a candidate which was challenged in writ before the High Court and the matter reached the Hon'ble Supreme Court whereas in the present case, the State Election Commission has interfered at the very initial stage due to disqualification under Sections 135 and 124 of the Act.

7. Having considered the matter, the Court does not find any merit in the writ application. The fact that the petitioner was not the person whom he claims to be, as his name did not find place in the voter list of the constituency, he could not have rectified any mistake at that stage. When it is established from documents that the petitioner was not the person he claims to be and rather it was his brother on whose name he was contesting the election, any attempt by him to get the records corrected would not save him from the adverse consequences following such wrong claim by the petitioner.



Had it been a case where there was no other person by the name of *Sukati*, the matter may have been different, but in the present case, where documents reveal that there is a person by the name of *Sukati*, who is the elder brother of the petitioner, and who is very much alive, the petitioner cannot take advantage of the fact that though his name once found place in the voter list of the previous years, once it was removed and only the name of *Sukati* appeared, who was the elder brother, he could not contest the election on the name of his elder brother *Sukati*. This clearly would come in the category of fraud and once fraud is writ large, intervention at the very initial stage is not only required but the Court would also not intervene in such interference. The Court would hardly emphasize that the first and foremost requirement of the system is maintaining purity in the election process as well as in public life and just because a person has been able to get over the initial hurdle by his nomination paper being accepted, once such fraud has been detected and sought to be corrected by the State Election Commission, he cannot take a hyper technical plea that the process has to be completed before there can be any intervention. If such plea is entertained, it would amount to mockery of the entire system when a person, who commits fraud can cock-a-snook at the system which remains mute and helpless and unable to take any action despite his misconduct being proved from



the records and corroborating documents. As the petitioner is not the person whom he claims to be, which fact is clearly discernable from the materials on record, the Court would not lean in favour of the petitioner on a mere technicality that the process has to reach finality before any person can challenge such election.

8. For the reasons aforesaid, the Court does not find any error in the action of the State Election Commission and accordingly, the writ petition stands dismissed. The interim order of stay on declaration of result dated 15.06.2016 stands vacated.

9. After the order was passed, learned counsel for the petitioner and the State Election Commission informed the Court that on 15.06.2016, pursuant to the order impugned fresh election had taken place and counting done and result not declared in view of the interim order of the Court. The Court, based on the stand taken by the parties before the Court would, thus, clarify that now only the result be declared ignoring the letter of the Commission dated 21.06.2016, copy of which is Annexure-13 to the supplementary affidavit filed on behalf of the petitioner. It is further clarified that the present order is not a final declaration of the fact as to whether the petitioner or his elder brother is *Sukati* and any discussion made in this order is only for the purposes of disposal of the present writ application and shall not prejudice any of the parties



if the matter is brought before a competent Court of law for appropriate declaration. With regard to the plea of the petitioner of not being heard either during enquiry or by the State Election Commission, learned counsel for the State Election Commission has rightly submitted that in the present matter, when fraud has been established based on enquiries, taking into consideration the factual and documentary evidence, which have not been controverted by the writ petitioner even in the present proceedings, it would not be fatal to the order impugned.

(Ahsanuddin Amanullah, J.)

P. Kumar

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