

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2959 of 2017

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Ramawati Devi, Wife of Manager Singh, Resident of Village- Jalapur, P.O.- Bela,
P.S.- Dariyapur, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate-cum-District Election Officer (Panchayat), Saran at Chapra, District- Saran at Chapra.
5. The Sub-Divisional Officer, Sonapur, District- Saran at Chapra.
6. The Senior Deputy Collector, District Legal Cell, Saran at Chapra, District- Saran at Chapra.
7. Ruby Kumari, Wife of Sri Santosh Kumar Yadav, Resident of Village- Harna, P.S.- Dariyapur, District- Saran at Chapra, presently Pramukh of Block Panchayat Samiti, Dariyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Dariyapur, District- Saran at Chapra.
8. The Block Development Officer, Dariyapur, District- Saran.
9. The State Election Commission (Panchayat) Bihar through the State Election Commission, Sone Bhawan, 3rd Floor Birchand Patel Path, Patna.
10. Gyanti Devi
11. Malti Devi
12. Babita Devi
13. Rita Devi
14. Nasima Khatoon
15. Champa Devi
16. Shail Devi Respondent Nos. 10 to 16 are Members of Block Panchayat Samiti Dariyapur, District- Saran through the Block Development Officer, Dariyapur (Respondent No. 08) P.O. Dariyapur, District- Saran.
17. Madan Kumar, Son of not known to the petitioner the then Sub Divisional Officer, Sonapur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate
For the SEC	:	Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, Advocates
For the Respondents No. 7, 12 to 16	:	Mr. Sandeep Kumar and Mr. Vivekanand Singh, Advocates
For the Respondents No. 17	:	Mr. Rajesh Kumar Singh and Mr. Ravi Prakash, Advocates
For the Respondent No. 11	:	Mr. S. D. Yadav and Mr. Shyameshwar Kumar Singh, Advocates
For the Respondent No. 10	:	Mr. D. K. Sinha, Sr. Advocate Mr. Girish Chandra Jha, Advocate



For the State : Mr. Prabhat Ranjan, A.C. to G.P. 6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 16-10-2017

Heard Mr. S.B.K. Mangalam, learned counsel for the petitioner; learned AC to GP-4 for the State; Mr. Amit Shrivastava along with Mr. Sanjeev Nikesh, learned counsel for the respondent no. 9; Mr. Sandeep Kumar along with Mr. Vivekanand Singh, learned counsel for the respondents no. 7 and 12 to 16; Mr. S. D. Yadav along with Mr. Shyameshwar Kumar Singh, learned counsel for the respondent no. 11 and Mr. D. K. Sinha, learned senior counsel along with Mr. . Girish Chandra Jha, learned counsel for the respondent no. 10. Despite valid service on the remaining private respondents, nobody has appeared to assist the Court when the matter was heard.

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

“(I) For issuance of an appropriate writ in the nature of CERTIORAI for quashing the order dated 09.02.2017 passed by the Respondent No. 4 in Misc. (Panchayat Election) Case No. 02 of 2016, a copy whereof has been circulated to all concerned including the petitioner under memo no. 91 dated 09.02.2017 issued under the signature of Respondent no. 6, whereby and where under the Respondent no. 4 has been pleased to reject the complaint filed by the petitioner, challenging the election of Respondent no. 7 as the Pramukh of the Block Panchayat Samiti, Dariyapur.



(II) For a declaration that if Rule-63 of the Bihar Panchayat Election Rules, 2006 provides for a companion only to blind/infirm voters and the direction issued by the State Election Commission under its letter no. 5041 dated 03.06.2016 has extended this benefit of companion even to illiterate members of the Panchayat Samiti, the members must be illiterate and if they are not illiterate, permission by the Presiding Officer to take assistance of companion by the members for recording their votes would infringe the secrecy and purity of election process and on that ground alone, the result of election is fit to be declared void.

(III) For a declaration that in the impugned election in which the Respondent no. 7 was elected as the Pramukh of the Panchayat Samiti, the Presiding Officer had allowed the assistance even to those members, who were not illiterate, the action of the Respondent no. 5, who was presiding over the meeting was vitiated the election of Respondent no. 7 and, therefore, her election is fit to be set aside as also for quashing the entire proceeding of Dariyapur Block Panchayat Samiti dated 30.06.2016 in which the Respondent no. 7 was elected as the Pramukh of Panchayat Samiti in question.

(IV) Consequent upon declaring the election of Respondent no. 7 void, this Hon'ble Court may direct the Respondents to hold a fresh election in accordance with law from the stage of polling by the elected members in a free and fair manner.

(V) 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 basic issue involved in the present case is whether the election held after permitting seven persons to cast their vote using the help of a minor was proper. The contention on behalf of the petitioner was basically on the ground that many of those seven



persons had declared in their nomination paper to be literate, and further, one of them had, in her own pen, written the application asking for a help claiming to be illiterate and also that the remaining six applications were in the same handwriting. It was also contended that in some cases, the help which was sought for was not permitted and a third person was given as such help for which there was no provision in law or any justification or reason recorded in the official records.

4. In view of such issues cropping up, the Court at the first instance, by order dated 20.06.2017, had required that the State Election Commission to pass an order. In terms thereof, the State Election Commission has, after hearing all the parties concerned, passed a detailed order on 30.08.2017 in Dispute Case No. 38 of 2017, holding that the procedure adopted of allowing help to the seven concerned was not proper and had further directed for holding of fresh election. However, by a corrigendum the holding of fresh election has been kept in abeyance along with the implementation of the order in view of the pendency of the present writ application.

5. Learned counsel for the petitioner submitted that his contentions have been found to be valid and rightly the State Election Commission has held the election to be vitiated and directed for a fresh election. It was submitted that the stand taken by the



petitioner having been found correct, the Court would permit the State Election Commission to go ahead with holding a fresh election after setting aside the previous election.

6. Learned counsel for the State Election Commission submitted that in terms of the directions and observations of the Court, the State Election Commission being under a duty to supervise and ensure the fairness and purity of the election has taken a decision to not only recommend for action against the officer(s) responsible but also hold fresh election. It was also submitted that the order having been passed after hearing all the parties is detailed, reasoned and speaks for itself.

7. Learned counsel for the respondents no. 7 and 12 to 16, took a stand that the ground taken for interfering in an election are enumerated in Section 139 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'), which does not contain any provision to declare the election void on the ground that wrongly any person or persons have been given the benefit of assistance in casting their vote. It was further pointed out that no prejudice has been caused to the petitioner as they have casted their vote as per their free will and further that mere speaking a language would not make them literate.

8. At this juncture, learned counsel for the State Election



Commission interjected and submitted that an election petition cannot go into those aspects of the matter under Section 139 of the Act and can be looked into by the State Election Commission as per the provision of Section 40(4) of the Act read with the instructions dated 03.06.2016 and, thus, rightly the State Election Commission has taken a decision which is also fortified by the direction given by this Court earlier.

9. Learned counsel for the respondent no. 11 submitted that the State Election Commission has taken a hyper technical ground that because the concerned seven persons had signed, they were literate. It was submitted that the concerned respondent can only put her signature and nothing beyond that and on such ground alone, she cannot be termed to be literate, which is the requirement of the statute.

10. At this juncture, again learned counsel for the State Election Commission interjected and submitted that the provision to give assistance in voting is not there, either in the Act or in the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as the 'Rules'), and therefore, to take care of a practical situation under the plenary power available to the State Election Commission, directions have been issued under Letter No. 5041 dated 03.06.2016, where, at Clause-8 there is provision that in the event the concerned person is



illiterate, he may be given assistance to keep with him a minor on whom he has trust.

11. Learned counsel for the respondent no. 10 submitted that he shall be adopting the arguments advanced on behalf of the writ petitioner and is in agreement with the order passed by the State Election Commission dated 30.08.2017.

12. Learned counsel for the State submitted that the domain is that of the State Election Commission and the order passed by it is based on cogent reasons.

13. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the election held on 30.06.2016 for the post of Pramukh of Dariyapur Panchayat in the district of Saran cannot be upheld. The Act does not provide for any assistance to be taken by any person to cast his or her vote. However, Rule 63 of the Rules provides for the same, but it is restricted to votes of blind/infirm voters and not to any person who claims to be illiterate. To get over such situation, the State Election Commission has come out with detailed guidelines for conduct of the elections contained in Letter No. 5041 dated 03.06.2016. It is also pertinent to note here that pursuant to an order passed by the High Court, the State Election Commission had issued Letter No. 861 dated 03.06.2009. The same read with the provision



of Section 40(4) of the Act, empowers the State Election Commission to decide the dispute relating to election of Pramukh/ Up-Pramukh. Thus, such issue cannot be a matter of consideration in an election suit before the prescribed authority and moreover, under a direction given by the High Court, the State Election Commission has come out with instructions contained in Letter No. 861 dated 03.06.2009. Further, in Letter No. 5041 dated 03.06.2016, the instructions on the issue are very clear, where, Clause-8 permits persons who are illiterate the help of a minor, as per their desire, on whom they have faith. In the present case, from the order of the State Election Commission dated 30.08.2017, it is clear that there is no finding recorded by the Returning Officer that the person who was asking for such help was illiterate and moreover, it is proved from the records that in the case of a few persons, the minor, who was indicated to be allowed to assist was not the person who was finally granted such permission, who was a third person with regard to which also the Returning Officer has not recorded any reason as to how he has been allowed to assist the person concerned. Even otherwise, six applications having been recorded in one handwriting also does not inspire confidence. The most glaring aspect is that one of the persons allowed help has written a whole application running into several lines in her own pen and yet she has been accepted as an



illiterate and given the benefit of help. The Court also cannot lose sight of the fact that the margin of victory in the election in question is only two whereas seven persons have been granted such benefit of assistance, when the total number of voters was 34. The Court has gone through the order passed by the State Election Commissioner dated 30.08.2017 and is in agreement with the reasoning given in such order to arrive at the finding that the process has been vitiated.

14. Accordingly, in view of the discussions made hereinabove as well as the reasons recorded in the order of the State Election Commission dated 30.08.2017, the election for the post of Pramukh of Dariyapur Panchayat in the district of Saran held on 30.06.2016, is set aside. The Court has been persuaded also due to the reason that such act amounts to fraud on the system where a mockery has been made of the procedure adopted for voting. The Court is not required to overemphasize the fact that the right in such matters are statutory and thus, have to be exercised within the boundaries of the statutes and the directions issued by the State Election Commission as provided for in Article 243 K of the Constitution of India where it has been given general and residuary power of superintendence, direction and control for such election which gives it the authority to issue instructions in areas which require clarification and are not directly covered, either under the Act



or the Rules.

15. In view thereof, the Court further upholds the decision of the State Election Commission to go in for fresh election to the post of Pramukh of the concerned Gram Panchayat. Let the same be done expeditiously, in accordance with law, for which the State Election Commission shall take appropriate steps.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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