

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16907 of 2016

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Smt. Tara Devi @ Tara Devi wife of Jugal Kishore Bind Resident of Village - Mahkola, P.O. - Teghra, P.S. - Haveli Kharagpur, District - Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
2. The State Election Commission, through the Deputy Secretary, Govt. of Bihar, Patna.
3. The District Magistrate cum District Election Officer, (Panchayat Election), Munger.
4. The Returning Officer cum Circle Officer, Anohal, Haveli Kharagpur, District - Munger.
5. The Block Development Officer, Haveli Kharagpur Block, District - Munger.
6. Anita Devi wife of Gopal Bind R/o Village - Mahkola, P.S. - Teghra, P.S. - Haveli Kharagpur, District - Munger.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Avinash with
Mr. Madhurendra Kumar, Advocates

For the SEC : Mr. Amit Shrivastava with
Mr. Ritesh Kumar, Advocates

For the State : Mr. Kumar Alok, S.C. 7 with
Mr. Niraj Kumar, A.C. to S.C. 7

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 11-04-2017

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court against the order dated 23.08.2016 passed in Election Petition No. 03 of 2016 by which the same has been dismissed.



2. The petitioner was a contestant for the post of Member from Ward No. 7 of Gram Panchayat Raj Barui. After the election, the certificate showing her to be the winner was issued to her on 05.06.2016 showing her to have secured 164 votes compared to 156 by the respondent no. 6. However, when she had gone for subscribing oath to the post, she was not allowed and in her place, the respondent no. 6 was administered oath. The petitioner challenged the same before the Munsif 1st, Munger in Election Petition No. 03 of 2016 and the same was dismissed by the order impugned dated 23.08.2016.

3. Learned counsel for the petitioner submitted that once a certificate of election has been issued in her favour, the authorities were duty bound to administer oath to her and denial of the same is arbitrary and illegal.

4. Learned counsel for the State, who has filed counter affidavit, submitted that the writ petition is misconceived. It was submitted that the petitioner and respondent no. 6 were candidates for Ward No. 7 whereas the respondent no. 6 also contested for the post of '*panch*' and in the said election, the respondent no. 6 secured 154 votes while rival Sunita Devi securing 164 votes was declared elected, whereas, for Ward No. 7, the petitioner had secured 163 votes compared to 166 obtained by the respondent no. 6. It was submitted that due to clerical error, the result of '*panch*' was shown in the result



of Ward No. 7 and, thus, the petitioner was wrongly issued the certificate showing her to be elected though the respondent no. 6 had been elected securing 3 more votes compared to the petitioner. It was submitted that due to obvious clerical error, when such fact was detected, respondent no. 6 was also issued a certificate showing her to be the winner on 22.06.2016. Learned counsel submitted that after the certificate is issued, in Form - 23, the official results are sent to the authorities by the Returning Officer in which also the respondent no. 6 has been shown to be the winner candidate and, thus, rightly oath has been administered to her.

5. Having considered the rival contentions, the Court does not find any merit in the present writ application. When, from the resultsheet, it is apparent that for the election to Ward No. 7, the petitioner had secured 163 votes compared to 166 by the respondent no. 6 and further the result as reflected in the writ petition and obtained from the Internet by the petitioner showing he to have secured 164 compared to 156 obtained by the respondent no. 6, was an apparent error inasmuch as the said 156 votes was secured by the respondent no. 6 but for the post of '*panch*' and not for Ward No. 7 and for such election of '*panch*', Sunita Devi had secured 164 votes and was declared elected, for the post of election to Ward No. 7, the petitioner had obtained only 163 votes and the respondent no. 6 had



secured 166 votes. Accordingly, besides the certificate being issued to the respondent no. 6, even Forms 21 and 23 reflect the same position. This being the factual aspect reflected from the official records, only clerical error having been corrected, there being no estoppel for correction of a *bona fide* mistake, no relief can be granted to the petitioner on the basis of a hyper-technicality that once a certificate has been issued in her favour, she has to be administered oath and has to be considered as the winner for Ward No. 7. The Constitution of India mandates the truthful reflection of the mandate of the people, which in the facts and circumstances of the present case clearly shows respondent no. 6 to be the winner. Moreover, a clerical error cannot frustrate the will of the majority.

6. For the reasons aforesaid, the Court does not find any error committed by the authorities in declaring the respondent no. 6 as the rightful winner and thereafter in her taking oath to her post.

7. The writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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