

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16542 of 2016

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Vandana Devi, Wife of Bir Bahadur Rai, Resident of Village- Jagatpur, P.S.-
Phulparas, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar Panchayati Raj,
Government of Bihar, Patna.
2. The Chairman, State Election Commission, Bihar, Patna.
3. The Secretary, Bihar Election Commission, Sone Bhawan, Patna.
4. The Deputy Secretary, Bihar Election Commission, Sone Bhawan, Patna.
5. The District Magistrate, Madhubani.
6. The Sub-Divisional Officer, Phulparas, Madhubani.
7. The Circle Officer, Phulparas, Madhubani.
8. Chaitali Kumari Wife of Chandra Veer Kamat, Resident of Village- Parsa, P.S.-
Goghardiha, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Ms. Lakshmi Kant Sharma, Advocate Mr. Rejesh Kumar, Advocate Mr. Rakesh Kumar Sharma, Advcoate
For the State	:	Mr. Manish Kumar, AC to AAG-6
For the State Election Commission (Respondents No. 3 and 4)	:	Mr. Amit Srivastava, Advocate Mr. Girish Pandey, Advocate
For the Respondent No. 8	:	Mr. S. B. K. Mangalam, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-01-2017

Heard learned counsel for the petitioner, the State
Election Commission and the respondent no. 8.

The challenge in the present writ application is to the
maintainability of a compliant filed by the respondent no. 8, before
the State Election Commission challenging her election to the post of
Member, Zila Parishad in the District of Madhubani.

Learned counsel for the petitioner submitted that after



the petitioner had won the election and had been granted the certificate and had also assumed charge of her office, the respondent no. 8, challenged her election in Election Petition Case No. 1 of 2016, before the Competent Forum i.e., the Sub Judge-II, Jhanjharpur. Learned counsel submitted that thereafter the respondent no. 8, again moving before the State Election Commission for the same cause, on the same grounds was not maintainable as even though, technically, both forums are equally available, but under the doctrine of election, once the respondent no. 8 had chosen to move in an Election Petition and without withdrawing the same, maintaining another application before the State Election Commission was impermissible in law.

Learned counsel for the State Election Commission submitted that though the petition filed by the respondent no. 8, before it is maintainable and steps have also been taken in the matter, but one of the grounds taken is with regard to the petitioner being a foreigner, which cannot be adjudicated in view of the decision in the case of **Md. Alamgir vs. State of Bihar** reported as **2014 (1) PLJR 562**, where at paragraph 32, the Court has held that the question of citizenship can only be decided in terms of the Citizenship Act, 1955 by the authorities empowered under the said Act and not by any other person, including a Court of law or the State Election Commissioner under the Panchayat Raj Act. He submitted that similar view has



been taken by a division bench of this Court in the case of **Dhanwanti Devi vs. State Election Commission** reported as **2012(1) PLJR 296**, to which, incidentally, this Court was a party. He fairly submitted that though the said decision has been challenged before the Hon'ble Supreme Court by the State Election Commission but there is no order of stay. Learned counsel also submitted that in the present case, the matter was taken up by the State Election Commission on the complaint filed by the respondent no. 8 and not *suo motu*.

Learned counsel for the respondent no. 8 submitted that there are many grounds on which the election of the petitioner has been challenged which are valid ground and the State Election Commission has the power to adjudicate the matter. He further submitted that since it is for her to decide which forum to approach, when more than one is available, she cannot be faulted for having approached the State Election Commission. However, he submitted that under the changed circumstances, he may be permitted to pursue the relief before the State Election Commission and that he would withdraw the Election Dispute Case No. 1 of 2016, which is pending. He submitted that the respondent no. 8, not being fully aware of the provisions, had filed the Election Petition Case and had also moved the State Election Commission, but as of now, she wants to pursue



the matter before the State Election Commission and not continue with the Election Dispute case. He submitted that under the Bihar Panchayat Raj Act, 2006, the State Election Commission has power even to *suo motu* go into the aspect and decide the matter and, thus, the proceeding before the State Election Commission may be permitted to continue.

Having considered the rival contentions, the Court has no hesitation in holding that any party having a statutory right where more than one forum is available for moving with regard to any grievance, it is for that party to decide as to which forum he or she may choose. This aspect cannot be disputed. However, in the present case, another issue which is equally important is whether a person may simultaneously maintain two petitions before two different forums for the same cause. Further, the issue will also arise as to whether once, under the doctrine of election, a person has chosen one forum out of more than one available to him or her, the second forum which was invoked later would be permitted to continue with the said complaint or not. Here the Court would like to comment that there may be a case where the party may genuinely be ill-informed or unaware of any provision and there may be some truth about such ignorance, but once a party is aware that there is an alternate forum and wishes to move that forum, before moving the



second forum, the minimum requirement is that the *lis* pending before the forum, which was approached earlier, is withdrawn. This is the only way to gauge the conduct and *bona fide* of the person that after being aware of the alternate forum, he or she has chosen to go for the alternate forum and not the forum he or she may have invoked. If the same is not done it may indicate forum hunting, which cannot be permitted. Even otherwise, once a regular election dispute under the statute has been filed, in the normal course of event, the State Election Commission should normally state that it is till the decision of the election dispute. Such view has also been taken by a Bench of this Court in the case of **Md. Shakil vs. State of Bihar** reported as **2014 (3) PLJR 624**, the relevant being at Paragaph-14 which is quoted hereinbelow:

“14. So far as the question of State Election Commission having proceeded in the matter although prior to filing of complaint before it an Election Petition on the same issue was pending in which respondent no. 7 was also a party respondent, the same having been brought on the record before the Election Commission, I am of the view that since the Election Petition was prior to filing of the complaint before the State Election Commission in all propriety the State Election Commission should not have proceeded any further with the complaint and ought to have allowed the matter to be adjudicated by the Election Tribunal. However, the same does not mean that the order of the State Election Commission is without jurisdiction, as it is not even a case where the Election Petition had been filed by respondent No. 7, and in any case when the statute confers powers



upon two authorities with respect to the same matter the prior order of the subsequently moved authority cannot be held to be illegal. In my view, any such finding arrived at by any of the two statutory authorities would become binding on the other statutory authority. However, as earlier stated by me, in the normal course it is expected that when power is conferred to two different statutory authorities, only one of them should proceed in the matter so as not to give rise to conflicting decisions and in the normal course the statutory authority whose jurisdiction has been invoked later should not proceed further in the matter but await the decision of the other statutory authority.”

The said decision has been affirmed by a Division Bench of this Court.

Having regard to the aforesaid, in the considered opinion of the Court, the complaint before the State Election Commission of the respondent no. 8, is not proper, especially when she had earlier moved and filed an election dispute case, which is still pending. Thus, the complaint before the State Election Commission, which is under challenge in the present proceeding, in the particular facts and circumstances of the case, as enumerated hereinabove, is set aside.

However, in view of the apprehension raised by learned counsel for the respondent no. 8, that the proceeding in the election dispute case may be delayed by the petitioner, learned counsel for the petitioner has assured the Court that she shall



cooperate in the proceeding and ensure that the matter is concluded within four months. In such view of the matter, direction is also issued to the Sub Judge-IIInd, Jhanjharpur to dispose off the Panchayat Election Petition No. 1 of 2016 within four months from the date of production of a certified copy of this order before it.

It is made clear that the Court has neither gone into nor expressed any opinion with regard to the merits of the matter, which shall be dealt with by the learned Court below where the election dispute case is pending.

(Ahsanuddin Amanullah, J.)

P. Kumar

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