

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11499 of 2017

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Ram Roop Devi Wife of Sri Mankeshwar Sah Resident of Village- Patahi, P.O. and
P.S. Patahi, District- East Champaran at Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Magistrate, East Champaran at Motihari,
District- East Champaran at Motihari.
2. The Block Development Officer, Patahi, District- East Champaran at Motihari.
3. Krishna Mohan Kumar Son of Sri Shiv Narayan Thakur Resident of Village-
Patahi, Tole- Nanhakar, P.O. and P.S. Patahi, District- East Champaran at
Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

Ms Anita Kumari, Adv.

For the Respondent/s : Mr. S. N. P. Sinha, Adv.

Mr. Sanjay Kumar No.7, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-01-2018

This writ petition has been filed by the petitioner for quashing the judgment and order dated 31st July, 2017 passed by the learned Munsif-cum-Election Tribunal Raxaul at East Champaran, Motihari in Election Petition No.6 of 2016 by which the election petition filed by the petitioner challenging the election of the respondent no.3 has been dismissed. Another prayer of the petitioner is to declare election of the respondent no.3 to be void, as he had filed an incomplete affidavit along with his nomination paper before the Returning Officer for contesting the election for the post of Mukhia of Gram Panchayat Raj-Patahi, (East) under Patahi Block of the



District East Champaran.

2. The brief facts of the case are that the respondent no.3 was declared elected for the post of Mukhia of Gram Panchayat Raj-Patahi, (East) for which election was held on 28.04.2016. Being aggrieved by the declaration of result in the said election, the petitioner had filed Election Petition No.6 of 2016 in the court of Munsif-cum-Election Tribunal, East Champaran at Motihari on the ground that in the affidavit which the respondent no.3 had filed along with his nomination paper he had left paragraphs 4(kha) and 5 blank in which he had to furnish details of moveable assets and liabilities of himself, his spouse and the dependent.

3. In the notification issued by the Returning Officer, following was the detail schedule of Panchayat Election, 2016 in Gram Panchayat Raj Patahi :

Last date for filing nomination paper : 11.03.2016

Date of scrutiny of nomination paper : 14.03.2016

Date of withdrawal of candidature : 16.03.2016

Date of Poll : 28.04.2016

Date of Counting : 02.06.2016

Date of declaration : 02.06.2016

4. After counting of votes on 02.06.2016, the respondent no.3 was declared elected for the post of Mukhia. After declaration of



the result, the petitioner filed an election petition under Section 137 of the Bihar Panchayat Raj Act, 2006 (for short 'Act, 2006') challenging the election of the respondent no.3, which was registered as Election Petition No.6 of 2016 (Annexure-1) on the ground that the Returning Officer had improperly accepted the nomination paper of the respondent no.3.

5. In the election petition, the contention of the petitioner was that until last date for filing nomination paper, the petitioner, the respondent no.3 and 11 others had filed their nomination before the Returning Officer. After scrutiny, nominations filed by all the 13 candidates were found valid. Thus, the Returning Officer published the list of 13 validly nominated candidates in Form-7. Out of 13 validly nominated candidates, two candidates, namely, Shyam Babu Prasad and Satyendra Kumar Mandal withdrew their candidature before the last date and time for withdrawal of nomination paper and the remaining validly nominated candidates remained in the fray and, therefore, the Returning Officer published their names in Form-9.

6. The further contention of the petitioner was that the right of electors to know about the candidates when he is going to vote was first recognized by the Supreme Court in the case of *Union of India Vs. Association of Democratic Reform & Ors. [(2002) 5 SCC 294]* and after the judgment of the Supreme Court was given effect to by



the Election Commission of India in relation to Parliament and Assembly Election, the State Election Commission, Bihar also required the candidates to file similar affidavit before the Returning Officer along with his nomination paper. In consonance with the aforesaid judgment of the Supreme Court, provisions were made under Section 125-A of the Bihar Panchayat Raj Act, 2006, which required a candidate to furnish information on affidavit on the aspects in relation to his/her candidature.

7. It was further contended that if any part of the required affidavit filed by a candidate seeking election is left blank, the Returning Officer was required to reject his nomination paper on this ground alone and this can also be a ground for setting aside the election if a candidate filing blank affidavit succeeds in the election.

8. The further case of the petitioner was that he had obtained an attested copy of nomination paper filed by the returned candidate before the Returning Officer under Right to Information Act along with which he had also been supplied a copy of the affidavit filed him in terms of Section 125-A of the Act and from perusal of the affidavit, it was evident that there was no disclosure about his moveable assets as required under para 4(kha) of the affidavit as also his liabilities coupled with the liabilities of his wife and dependent as required under para 5.



9. On the aforesaid grounds, the petitioner had sought for setting aside the election of the respondent no.3, who had been declared elected for the post of Mukhia of Gram Panchayat Raj, Patahi (East).

10. The respondent no.3 contested the election petition filed by the petitioner and filed his written statement, which has been brought on record as Annexure-6 to the present petition. In the written statement, he pleaded that the election petition filed by the petitioner was not maintainable as the petition had not been filed in compliance with the provisions of the Act, 2006. His contention was that it is wrong to say that the affidavit filed along with nomination paper of the respondent was blank and incomplete. It was stated that due to insufficient space in paragraph 4(kha) and 5 details of assets were furnished in separate affidavit paper along with nomination paper. It was contended that the petitioner was required to implead all the candidates, who contested the election along with the returned candidate in the election petition, but only the returned candidate and the Returning Officer, who declared nomination paper valid, were made party and, thus, the election petition was fit to be dismissed on the ground of non-joinder of necessary parties. It was also pleaded that due to insufficient space in paragraphs 4(kha) and 5 for giving details of assets and liabilities, the details of assets and liabilities were



furnished in separate affidavit filed along with the nomination paper by the returned candidate. It was further contended that only after verifying the entire papers along with nomination paper, the nomination of the returned candidate had been declared valid and he was permitted to contest the election.

11. On the basis of the pleadings of the parties, learned Munsif-cum-Election Tribunal framed following issues for determination in the election petition :-

1. Whether the present petition has been filed in compliance to the provision of Bihar Panchayat Raj Act ?
2. Whether the petitioner has succeeded in proving that respondent has not furnished his details of assets and liabilities in his nomination paper ?
3. Whether petitioner has succeeded in proving that nomination paper of respondent was illegally accepted?
4. Whether petitioner has succeeded in proving that the result of election was materially affected ?
5. Whether the election of respondent to the office of Mukhiya is liable to be set aside ?

12. The plaintiff petitioner adduced following oral and



documentary evidences in the proceeding :

(Oral Evidence)

- (1) P.W.1- Smt. Ramroop Devi
- (2) P.W.2- Shyambabu Prasad
- (3) P.W.3- Amar Kumar, BDO-cum-Returning Officer,
Patahi Block.

(Documentary Evidence)

- (1) Exhibit-1- Nomination paper send by B.D.O. (with
objection).

13. On the other hand, the returned candidate (respondent
no.3) adduced following oral and documentary evidences :-

(Oral Evidence)

- (1) R.W.1- Krishna Mohan Kumar
- (2) R.W.-2- Arvind Kumar Singh
- (3) R.W.3- Baldeo Prasad Singh
- (4) R.W.4- Lalan Dwivedi
- (5) R.W.5- Santosh Kumar Mishra
- (6) R.W.6- Pradeep Kumar

(Documentary Evidence)

- (1) Exhibit-A – Signature on nomination form by proposer
(Lalan Dwivedi)
- (2) Exhibit-B – Xerox copy of affidavit in regard of paragraph
4b and 5 of nomination paper (with objection)



- (3) Exhibit-C – Receipt of nomination form and notice of scrutiny
- (4) Exhibit-D – Symbol of election given by election office
- (5) Exhibit-E – Letter of District Panchayat Officer to B.D.O.
- (6) Exhibit-F – Letter of B.D.O. to District Panchayat Officer.

14. Apart from above, one Ram Pratap Singh, a Public Notary, was also examined as a court witness.

15. After evidences on behalf of the parties were led before the learned Munsif-cum-Election Tribunal in the election petition, the learned Munsif-cum-Election Tribunal decided all the five issues against the petitioner.

16. For the sake of convenience, the findings of the learned Munsif-cum-Election Tribunal, as recorded in paragraphs 9 to 15, are extracted hereunder :-

“9. Issues No. (3) & (4)- (3) Whether petitioner has succeeded in proving that nomination paper of respondent was illegally accepted ? (4) Whether petitioner has succeeded in proving that the result of election was materially affected ?

I want to discuss issue no.3 and 4 together because these issues are most important issues and are related with each other. They are vital to decide this suit.

The petitioner has presented one document Ext.-1 to support these issues in his favour, which is nomination paper send by BDO, Patahi to this Court. Now I will discuss this exhibited documents. After seeing and perusal of Ext.-1, it clears that paragraph 4(ख) and 5 are totally blank and this is admitted fact by both parties. Opposite party admits that paragraph 4(ख) and 5 are



blank in nomination paper. But he asserts that due to lack of space he left blank this space and attached a separate affidavit in regards of paragraph 4(ख) and 5 of nomination paper. Opposite party has produced a photocopy of this affidavit to prove this two issues in his favour. Ext.-B- the Photostat copy of the affidavit filed by the opposite party in support of column 4(b) and 5 against which allegation has been made to be blank. Ext.-C is receipt of nomination form and notice of scrutiny. It clears that after finding correct nomination form, Returning Officer gave receipt to candidate Krishna Mohan Kumar. He also scrutinized the nomination form and found correct. Ext.-D is symbol of election given by election office. There is no need to discuss this exhibit here. Ext.-E & F are corresponding letter of show cause between R.O. and District Panchayat Raj Officer, Motihari in respect of affidavit which was annexed with nomination form of Krishna Mohan Kumar.

10. Now I want to discuss oral evidences produced by both party in regards of this two issue no. 3 and 4. Petitioner Ramroop Devi was examined in this case before the court as P.W.-1. She has supported all the contents of her election petition in different paras of her examination in chief as affidavit but the petitioner admitted in para-21 of her cross examination that she was not available at the time of scrutiny before the Returning Officer and she also admitted in para 34 of cross examination that how may paragraphs were in nomination paper, she does not know. She admitted that she is only Class-III passed lady having no knowledge regarding nomination process. She did not see the nomination paper of the opposite party.

Next witness- P.W.-2 is election agent of the petitioner and her son. He also supported the case of petitioner in his examination in chief. But he admitted in para 17 of his cross examination that he did not know anything regarding election. He admitted in para-21 of his cross examination that he got no knowledge as to how many annexures are in the nomination paper and after perusal of evidence comes in support of petitioner's case. P.W.-1 – petitioner has herself and P.W.-2 is her son, election agent, learned counsel for



opposite party argued that both are interested witnesses having no knowledge regarding the documentary process of nomination.

P.W.-3 is Returning Officer Amar Kumar, Block Development Officer of Patahi. He deposed as P.W.-3 and in his examination-in-chief he said in para 2 that on direction given by this court, he send nomination paper of Krishna Kumar along with annexures/affidavit to this court by his letter no.710 dated 15.12.2016 and further said in para-3 that affidavit of Krishna Mohan Kumar (respondent) is not available in his office now. Learned counsel for opposite party argued that meaning thereby some time before affidavit of Krishna Mohan Kumar was available in his office. He admitted in paras 14 and 15 that a report regarding affidavit of opposite party was called for by District Panchayat Raj Officer, but after a lapse of 22-23 days, he did not submit his report and in para-16 and 17 he also admitted that report regarding affidavit and nomination will not be concluded information of Assistant Returning Officer (A.R.O.). P.W.3- Returning Officer admitted in paras 19 and 20 that there was direction of Election Commission that incomplete and blank affidavit will not be the ground of rejecting the nomination paper and in para 21 he also admitted that there was direction that incomplete forms be completed at the time of scrutiny. Returning Officer admitted in para 22 of his cross-examination that when the nomination was found fully correct, thereafter, receiving receipt was granted to candidates and when the nomination was found fully correct, name candidates were fully published in Form-7.

Hence, the allegation of incomplete affidavit as well as blank column of affidavit regarding assets and liabilities vide paras 4(ख) and 5 and case of improper acceptance did not prove by petitioner and allegation did not prove beyond reasonable doubts rather the case falls flat on the ground available on the record. Opposite party pleaded that there was insufficient space in column 4(b) and 5. So that the required information were furnished by him in a separate affidavit and this fact is specifically pleaded by the opposite party in paras 6 and 24 of his written



statement.

11. Now I want to discuss here oral evidences produced by opposite party. R.W.1- Krishna Mohan Kumar who is sole opposite party and returned candidate, asserted the all contents of his written statement in his examination in chief. He stated in para 8 and 9 of his examination-in-chief that he fulfilled all information in his nomination paper and due to lack of space he attached a separate affidavit in respect of paragraph 4(ख) and 5 along with nomination paper. Returning Officer found correct to this nomination paper in provision of Bihar Panchayati Raj Act, 2006 and gave a receipt to him. He also stated in para 15,16 and 17 of his cross examination that each and every information were detailed in nomination paper. In para 16 he stated that separate affidavit in respect of information required in column 4(b) and 5 was sworn. He also said in para 20 of his cross examination that affidavit was prepared at 4.00 O'clock at Motihari and he further stated in para 21,22 and 23 that he disclosed his assets and liabilities along with his affidavit.

R.W.2- Arvind Kumar Singh, who is Prastavak of Krishna Mohan Kumar, has stated in para 11 of his cross examination that column 4(ख) and 5 are blank, but supported by separate affidavit.

Next witness on behalf of the opposite party is R.W.3- Baldeo Prasad Singh who is identifier over the affidavit filed in support of column 4(ख) and 5. He stated in para 7 and 8 that after verification of nomination paper he consulted with a lawyer R.K. Pandey and prepared the affidavit.

R.W.-4 is Lalan Dwivedi and his signature over nomination paper is marked as Ext.-A. He has witnessed the nomination paper and in para 15 of his cross examination he stated that the blank space of paragraph 4(ख) and 5 of nomination paper was filled up by a separate affidavit. He stated that Krishna Mohan Kumar was sworn before Notary Public R.P.Singh in my presence which was annexed with nomination paper.

R.W.5 is Santosh Kumar Mishra who was one



of the candidate for Mukhiya post. He has admitted in his examination-in-chief that at the time of scrutiny Returning Officer had seen the blank space in column 4(ख) and 5 by swearing affidavit that blank space was filled in support of blank space and this statement is exparte. Lawyer of the petitioner did not controvert this fact. He also admitted in para 9 of his cross examination that column 4(b) and 5 were blank which was supported by separate affidavit.

R.W.6- Pradeep Kumar is a formal witness over the said affidavit. He proved the Photostat copy of affidavit as Ext.-B

Now after perusal of the entire evidence adduced on behalf of the opposite party it is established that there was an affidavit filed by opposite party in support of column 4(b) and 5 in support of the required information and details of assets as well as liabilities were disclosed by the opposite party.

Court witness- Ram Pratap Singh is a public notary who has been examined by this court as court witness. He appeared before this court with his register. This court finds that the name of Krishna Mohan Kumar has been written in serial no. 5450 on dated 04.03.2016 in this register having information of affidavits. He says in para 2 of his examination that he prepared and attested all affidavit of Krishna Mohan Kumar on dated 04.03.2016. He said in para 5 of his cross-examination that he himself wrote the name of Krishna Mohan Kumar in serial no.5450.

12. Learned counsel for petitioner argued that since it is a case of wrongful acceptance of the nomination paper of returned candidate himself, in view of several judgments of the Hon'ble Supreme Court, it is not required to adduce further evidence to prove that by the improper acceptance of the nomination paper of the sole respondent, the result of the election has been materially affected.

Learned counsel of opposite party argued that after perusal of election petition there is no case that the nomination paper was improperly effected which materially affected the result of Mukhiya election either to the petitioner or the returned candidate and



according to the proposition of law. He further argues that section 139(1)(d) says that the result of the election in so far it concerned, a returned candidate has been materially affected by the improper acceptance of any nomination must be plead specifically and proved without any reasonable doubt like a criminal charge. After perusal of paras 5 and 6 of the election petition it is admitted by petitioner that nomination of returned candidate was validly published in form-7 and also in form-9 then in that event, without pleading of improper acceptance and statement regarding materially affect of improper acceptance the election case is not maintainable. Neither the petitioner has pleaded nor proved the improper acceptance of nomination paper and thus, on this score alone, these two issue should be certainly decided against the petitioner. The matter of non- furnishing separate affidavit is under investigation before the District Panchayat Raj Officer, Motihari. If affidavit regarding education, property and other regarding found to be wrong then in that event criminal proceeding against the candidate concerned can be initiated under section 177 and 181 of the I.P.C. and this proposition of law is held by the Hon'ble Supreme Court of India in the case of ***Krishan Shankar Kathore Vrs. Arun Dattatray, (2004) SCC.***

After considering the evidences available on record and hearing the argument of both party. There was no chance for returning officer to accept improper nomination paper because there was specific direction of state election commission and a manual of Bihar Panchayat Raj Election was supplied to every Returning Officer in this direction which clears that at the time of scrutiny, nomination will not be rejected on the ground of incompleteness. So nomination paper of returned candidate was completed under the provision of Bihar Panchayat Raj Act, 2006. Hence, it is established here that there was no sufficient space in nomination paper therefore opposite party furnished the required information in said paragraph 4(ख) and 5 by a separate affidavit. Therefore, I am of the view that the petitioner has not succeeded in proving that nomination paper of respondent was illegally accepted. So he has not also succeeded in proving that the result of election was materially affected. Hence, issue no. 3 and 4 are



decided against the petitioner.

13. Issue No. (2) Whether the petitioner has succeeded in proving that respondent has not furnished his details of assets and liabilities in his nomination paper ?

When issue no.3 and 4 has been decided against petitioner, it is crystal clear that respondent Krishna Mohan Kumar furnished his details of assets and liabilities in his nomination paper by a separate affidavit in respect of paragraph 4(ख) and 5 of nomination paper. Thus petitioner has not succeeded in proving that respondent has not furnished his details of assets and liabilities in his nomination paper. Hence, this issue no.2 is also decided against the petitioner.

14. Issue No. (1)- Whether the present petition has been filed in compliance to the provision of Bihar Panchayat Raj Act ? – Now question for consideration according to the pleading of parties as to whether the election petition is maintainable in the eye of law under provision of Bihar Panchayat Raj Act, 2006 as well as the facts as stated by the petitioner. Petitioner's lawyer has argued that question of maintainability be decided on the basis of probability as such that matter is satisfactorily pleaded. On the other hand lawyer on behalf of the opposite party has contended that previously the court suo-motto heard the matter only on one point that without pleading the party who contested the election as well as the returning officer, the petition is maintainable or not and primarily found that the case is maintainable, then proceeded for adjudication. Simply section 137 of Bihar Panchayat Raj Act, 2006 provides the condition for election petition and parties to the petition has dealt with. Under sec 137(2) of Bihar Panchayat Raj Act established beyond doubt that all the candidate as well as the Returning officer is necessary party. The petitioner of this case filed a C.W.J.C. No. 18933/2016 before the Hon'ble High Court, Patna seeking direction to expeditiously disposal of this election petition and in that C.W.J.C. No. 18933/2016 State of Bihar, District Magistrate, East Champaran-cum-District Election Officer, East Champaran, Motihari, Block Development Officer of Block- Patahi-cum-Returning Officer, and Krishna



Mohan Kumar, returned candidate were made respondents and there is no need to decide that State of Bihar, District Election Officer-cum-District Magistrate, Block Development Officer-cum-Returning Officer who declared the opposite party as elected Mukhiya, are necessary party for challenging the election of elected Mukhiya of the election is set aside, the court may pass an order to this effect. How far it will be implemented if improper acceptance of nomination as alleged by petitioner is decided behind the back of Returning Officer, then in that event the order got any legal stand and according to the justice ? In such a situation this court thinks that the petition is not proper according to the law under section 137 and did not so, the election petition for want of necessary party, the order is fit and proper.

The learned advocate of respondent argued that petition of petitioner is not maintainable on the ground of affidavit of petitioner mentioned in election petition. He argued that court has got inherent power to decide the case according to the provisions of law. Opposite party is positively raised this question. Opposite party's lawyer argued that the affidavit of petitioner is not in accordance with law. Affidavit is not properly verified at the foot and contents of the election petition did not disclose in affidavit rather the space regarding knowledge and information in various paragraphs are blank. The statement of petition regarding the information receipt is also vague. According to the argument of opposite party, affidavit is completely defective and not in compliance with the provisions of law so that election petition supported with defective affidavit has got no legal stand to survive.

Lawyer arguing on behalf of the opposite party referred the Bihar Panchayat Election Rules, 2006, in which it is provided u/s 108 that verification of election petition should be done according to order 6 rule 15 of C.P.C. and after perusal of rule 15 of Order 6 C.P.C. it is clear and evident that each and every pleading should be verified at the foot by the party to the satisfaction of the court and clause-2 rule 15 of order 6 C.P.C. provides that petition shall be verified specifically by reference upon his information received and believed to be true and verification shall be signed



and the date on which and the place by which it was signed must be mentioned, but the election petition is not verified at the foot of petition rather verified on a separate sheet. The date of verification is blank. The paragraph as to knowledge is also blank and the paragraph number which are upon the information the writer of the place is also blank. In such a situation lawyer, who argued on behalf of the opposite party drew attention of the court that such an election petition which is neither properly verified nor supported with affidavit and lacking from the essential formalities of cause of action the case is fit to be rejected in provision of order 7 rule 11 of the C.P.C. as well as the verdict of the Hon'ble Supreme Court. Reliance has been placed by the opposite party for his contention upon the decision of the Hon'ble Supreme Court in the case of **Mr. V. Narayan Swamy Vrs. Mr. C.P. Thirunavukkarasu, 2002(2) SCC 294.**

In the aforesaid facts, in view of provision of CPC and law laid down by Hon'ble Apex Court, as referred to above, this court finds that this election petition is not maintainable under the provision of Bihar Panchayat Raj Act, 2006. Hence this issue no.1 is also decided against the petitioner.

15. Issue No.(5) Whether the election of respondent to the office of Mukhiya is liable to set aside ?

Issue no.5 is totally depend on decision of issue no. 3 and 4. When main issue no.3 and 4 have been decided against the petitioner, issue no.5 is also decided against the petitioner. Hence, the election of respondent to the office of Mukhiya is not liable to be set aside.”

17. Assailing the impugned judgment and order dated 31st July, 2017, Mr. S.B.K. Manglam, learned counsel for the petitioner submitted that the impugned judgment and order dated 31.07.2017 passed by the learned Munsif-cum-Election Tribunal is bad in law and, thus, fit to be set aside. He submitted that the learned Munsif-



cum-Election Tribunal has not appreciated the evidences led before him in proper perspective. The objection taken by the contesting respondent regarding maintainability of the election petition was wrongly decided, as the same was merely technical in nature and any deficiency in the verification of the affidavit should have been ignored, as of no consequence.

18. He submitted that leaving the space regarding knowledge and information blank in the election petition was also of formal nature and on this ground the election petition ought not to have been held not maintainable. He submitted that in view of the provisions prescribed under Section 139(1)(d)(i) of the Act, 2006, learned Munsif-cum-Election Tribunal ought to have declared the election of the respondent no.3 to be void, as owing to improper acceptance of his nomination, the result of the election had been materially affected. He also submitted that even if no plea in this regard was taken by the petitioner in the election petition that improper acceptance of nomination of the respondent no.3 has materially affected the result of the election, the learned Munsif-cum-Election Tribunal ought to have presumed that the improper acceptance of the nomination had materially affected the result of the election. In this regard, in support of his submissions, he has placed reliance on *Mairembam Prithviraj Vs. Pukhrem, Sharatchandra*



Singh [2017(1) PLJR 50 (SC)].

19. He submitted that the learned Munsif-cum-Election Tribunal has also erred in holding that the petitioner has not succeeded in proving that the respondent no.3 has not furnished his details of assets and liabilities in his nomination paper, as the information required for in column 4(kha) and 5, have apparently not been given in the affidavit filed along with the nomination paper. According to him, if the information was not mentioned in the space provided for the same, the respondent no.3 had failed to discharge his obligation, as the information was required for the voters and, obviously, if the required information was not mentioned at the proper place, it would have left the voters confused and the object of disclosure was defeated.

20. Per contra, Mr. S.N.P. Sinha, learned counsel appearing for the respondent no.3 submitted that the learned Munsif-cum-Election Tribunal has correctly appreciated the facts and law involved in the case. He submitted that the election petition had not been verified, as required under Rule 100A of the Bihar Panchayat Raj Rules, 2006 and, hence, it was fit to be rejected on that score alone.

21. He submitted that apart from non-verification of the election petition, the petitioner also failed to disclose in the affidavit regarding knowledge and information in various paragraphs of the



election petition. He submitted that in case the election petition is neither properly verified nor supported with affidavit, the same is fit to be rejected in view of the provisions of Order VII Rule 11 of the Code of Civil Procedure as also in view of the ratio laid down by the Supreme Court in the case of *Mr. V. Narayan Swamy Vrs. Mr. C.P. Thirunavukkarasu*, [(2002) 2 SCC 294] and in view of the ratio laid down by a Full Bench of this Court in the matter of *Saratchandra Mandal Vs. Phani Bhusan Singh*, [AIR 1974 Pat 40 (FB)].

22. He submitted that the space provided in paragraphs 4(kha) and 5 of the nomination paper was not sufficient. Hence, the respondent no.3 filed a separate sheet of paper disclosing the assets and liabilities, as required by law accompanied by an affidavit of the respondent no.3, as prescribed under Section 125-A of the Act, 2006 and other relevant Act and Rules.

23. He submitted that the petitioner has obtained incomplete nomination paper without annexures and affidavit filed by the respondent no.3 along with the nomination paper. Had it not been the case, the Returning Officer would not have accepted the nomination paper. According to him, the nomination paper was verified and attested by the Returning Officer as the same was found validly filled up and requisite annexures were also attached.

24. He submitted that the Assistant Returning Officer, who



accepted the nomination paper of the respondent no.3 has not been made party defendant either in the court below or before this Court. The evidences adduced by the P.W.3, the Returning Officer and the court witness Ram Pratap Singh would clearly show that the relevant affidavit was filed by the respondent no.3 along with the nomination paper. He submitted that the impugned judgment has been passed by the learned Munsif-cum-Election Tribunal after proper appreciation of facts and law. There is no error apparent on the face of the record. Hence, it would not be proper for this Court in exercise of writ jurisdiction to interfere with the judgment passed by the learned Munsif-cum-Election Tribunal.

25. I have heard learned counsel for the parties and perused the record. I find substance in the submissions made by the learned counsel for the respondent no.3.

26. The election to any office of a Panchayat can be called in question under Section 137 of the Act, 2006 only by way of filing an election petition before the court of Munsif-cum-Election Tribunal within whose jurisdiction such Gram Panchayat is situated. The Act, 2006 attaches finality to the decision rendered by the court of Munsif-cum-Election Tribunal and the decision rendered by him is not appealable. The only remedy to an aggrieved person is to file a writ petition.



27. The scope of interference with the orders passed in an election petition is very limited and except where the findings are recorded on the basis of no evidence or whether the court of Munsif-cum-Election Tribunal has acted without jurisdiction, the writ Court cannot substitute its own judgment.

28. In *Syed Yakoob Vs. K.S. Radhakrishnan [AIR 1964 SC 472]*, a Constitution Bench of the Supreme Court while interpreting the scope of supervisory jurisdiction of writ Court in the matters arising out from the judgment of inferior courts or Tribunals observed:-

“...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is



shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.”

29. While interpreting “what an error apparent on the face of the record means”, the Constitution Bench in *Syed Yakoob* (Supra) further observed :

“It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. ...“

30. In *H. B. Gandhi Vs. Gopi Nath & Sons [1992 Supp (2) SCC 312]*, after referring to *Syed Yakoob* (Supra), the Supreme Court



held :

“Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in Judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

31. In *State of U.P. Vs. Johri Mal [(2004) 4 SCC 714]*, a three-Judge Bench of the Supreme Court observed that though re-appreciation of facts is not permissible in a petition for judicial review. The Court to a limited extent may scrutinize the facts to see that whether the decision making process is in accordance with law.

The Supreme Court observed :

“It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes



inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappraise the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.”

32. Keeping in mind the ratio laid down by the Supreme Court in the aforesaid decisions, it is to be seen as to whether the learned Munsif-cum-Election Tribunal recorded the findings on the basis of no evidence or has functioned without jurisdiction or the judgment suffers from an error of law apparent on the face of the record. It is apposite to reiterate that re-appreciation of evidence by this Court in exercise of its writ jurisdiction is impermissible as the writ jurisdiction of this Court is not akin to that of the appellate jurisdiction.

33. Be it noted that it is not even the case of the petitioner that the learned Munsif-cum-Election Tribunal has passed the impugned judgment without jurisdiction. In order to see whether the



findings recorded by him was erroneous or based on no evidence when I look to the first issue, I find from the record that the election petition is not verified at the foot of the petition. The paragraph as to knowledge is also blank and the paragraph numbers, which are upon information, is also blank. The verification is made on a separate sheet of paper in which the spaces meant for regarding paragraph number to the knowledge and the paragraph number to the information of their deponent are also left blank.

34. In *Saratchandra Mandal* (Supra), a Full Bench of this Court held that if there is sufficient compliance of verification of an election petition, literal compliance is not necessary, but if there is no compliance then it is imperative for the Tribunal to dismiss the election petition. The Bench observed :-

“For the reasons stated above, I would hold that the Election Tribunal has got power to allow amendment of the verification of an election petition challenging the election of a Gram Panchayat in this State, if it is not verified in accordance with the requirements of the Code, only if the defects or the cumulative effect of the defects is of minor nature so as not to take the matter out of the realm of the rule of sufficient compliance with the requirements of the Rules. **If there is sufficient compliance, literal compliance is not necessary. In many cases of this type amendment may not be necessary or possible. But if there is no sufficient compliance, then it is imperative for the Tribunal to dismiss the election petition.** It cannot afford to give an opportunity to the election petitioner for amending the election petition for removal of major and fatal defects.”

(emphasis mine)



35. Keeping in mind the ratio laid down by this Court in *Saratchandra Mandal* (Supra), when I look to the election petition filed by the petitioner, I find that there was absolutely no compliance of verification in the election petition, which fact has been noted in detail in the findings of the learned Munsif-cum-Election Tribunal.

36. So far as issue nos. 3 and 4 are concerned, on the basis of appreciation of evidences adduced, the learned Munsif-cum-Election Tribunal has concluded that there was an affidavit filed by the respondent no.3 in support of column 4(kha) and 5 and details of assets and liabilities were disclosed by him. He observed that it is established that there was no sufficient space in nomination paper therefore the opposite party furnished the required information by a separate affidavit. He also held that the petitioner failed to prove that the result of the election was materially affected.

37. In view of the evidences led on behalf of the parties as also in view of the evidence of Ram Pratap Singh, who was examined as a court witness, I find that no error in appreciation of evidence has been committed by the learned Munsif-cum-Election Tribunal. Moreover, the learned Munsif-cum-Election Tribunal has rightly held that in the election petition no pleading has been made that improper acceptance of nomination materially affected the result of election of Mukhiya.



38. At this stage, I think it appropriate to take note of the provisions relating to grounds for declaring election to be void, as prescribed under Section 139(1) of the Act, 2006, which read as under :-

“139. Grounds for declaring election to be void -

(1) Subject to the provisions of sub section (2) if the prescribed authority is of opinion -

- (a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or
- (c) that any nomination paper has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected
 - (i) by the improper acceptance of any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or
 - (iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void; or
 - (iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void.

39. A reading of Section 139(1)(d) of the Act, 2006 would make it clear that for declaring an election to be void in so far as it



concerns the returned candidate, the persons seeking declaration to be void must specifically aver that by improper acceptance of nomination paper the result of the election has been materially affected.

40. In the present case, it is an admitted position that at the time of scrutiny no objection was raised by the petitioner in respect of improper acceptance of nomination paper and the name of the returned candidate was validly published in Form-7 as also in Form-9.

41. Moreover, since the issue no.2 in the election petition whether the petitioner had succeeded in proving that the respondent had not furnished his details of assets and liabilities in his nomination paper was decided against the petitioner and it was held by the learned Munsif-cum-Election Tribunal that the respondent had furnished his details of assets and liabilities in his nomination paper by a separate affidavit in respect of para 4(kha) and 5 of the nomination paper, the issue no.4 could not have been decided against the respondent. If the details of assets and liabilities were already furnished by the respondent and the petitioner had failed to establish that the nomination paper of the respondent had illegally been accepted, under no circumstance the learned Munsif-cum-Election Tribunal could have decided the issue that the result of the election



was materially affected against the respondent.

42. As the facts of the present case are not similar to that of the facts in *Mairembam Prithviraj Vs. Pukhrem, Sharatchandra Singh* (Supra), the ratio laid down by the Supreme Court in the said case would be of no help to the petitioner.

43. In the result, for the reasons stated above, this Court finds no illegality, irrationality or impropriety in the impugned judgment and order dated 31st July, 2017 passed by the learned Munsif-cum-Election Tribunal, Raxaul at East Champaran, Motihari in Election Petition No.6 of 2016. No case for interference with the well considered and elaborate judgment passed by the learned Munsif-cum-Election Tribunal is made out.

44. The writ petition is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	17-02-2018
Transmission Date	

