

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17888 of 2016

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Rinju Devi wife of Umesh Prasad, resident of village-Balapur, P.O.-Barwa Khurd,
Police Station-Ghorasahan, District-East Champaran at Motihari

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department
Government of Bihar, Patna
2. The State Election Commission, Government of Bihar through the Election
Commissioner, Bihar, Patna
3. The District Magistrate, East Champaran at Motihari
4. The Sub-Divisional Officer, Sikarhana, Dhaka, East Champaran, at Motihari
5. The Block Development Officer, Ghorasahan, District-East Champaran at
Motihari
6. Prema Devi wife of Morari Lal Gadiya, resident of village- Purnahiya, P.S.-
Ghorasahan, District- East Champaran at Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhurendra Kumar, Advocate

For the Respondent no.2 : Mr. Amit Shrivastava, Advocate

: Mr. Girish Pandey, Advocate

For the Respondent/s : Mr. Anwar Karim, A.C. to G.P.-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-05-2018

This application has been filed by the petitioner for directing
the official respondents to cancel the election of respondent no.6
elected for the post of Mukhiya of Gram Panchayat Raj, Purnahiya
under Ghorasahan Block in the district of East Champaran at



Motihari.

2. Learned counsel for the petitioner submitted that the petitioner is by caste “Lohar” which comes under the category of Extremely Backward Class. In the Gram Panchayat Election, 2016, the post of Mukhiya of Gram Panchayat, Purnahiya under Ghorasahan Block in the District of East Champaran at Motihari was reserved for Extremely Backward Class and the petitioner who belongs to such category contested the election of the said Panchayat. He contended that the respondent no.6 Prema Devi, who is by caste “Marwari”, which does not come under the category of Extremely Backward Class, contested the election on the basis of forged and fabricated caste certificate of “Lohar” (Karmkar) and finally got elected for the said post defeating the petitioner. The petitioner has regularly been making complaint in this regard to the various authorities, but they did not take any action.

3. On the other hand, learned counsel for the State and the learned counsel appearing for the State Election Commission contended that in view of the statutory provisions of the Bihar Panchayat Raj Act, 2006 (for short ‘the Act, 2006’), the instant application filed under Article 226 of the Constitution of India is not maintainable. They submitted that the election of any person for the post of Mukhiya cannot be called in question by filing a writ petition.



4. I have heard learned counsel for the parties and perused the record.

5. As per Section 137 of the Act, 2006 election of any person for the post of Mukhiya cannot be called in question except by an election petition.

6. Sub Section (1) of Section 137 of the Act, 2006, which is prohibitory in nature, reads as under:-

“The election to any office of a Panchayat or Gram Katchahry shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office or a Gram Panchayat or Gram Katchahry is under dispute, the election petition shall lie before such Munsif within whose jurisdiction such Gram Panchayat or Gram Katchahry is situated and if the election to any office of Panchayat Samiti or to a Zila Parishad is under dispute, the election petition shall lie before such Sub-Judge within whose jurisdiction such Panchayat Samiti or Zila Parishad, as the case may be, is situated.

7. It is an admitted fact that election for the post of Mukhiya of Gram Panchayat Raj, Purnahiya was held in the year, 2016. As per election schedule, the result of the election was declared in the year, 2016 itself. Rule 106 of the Bihar Panchayat Election Rules, 2006 (for short ‘the Rules, 2006’) prescribes limitation for



filing an election petition against any elected candidate according to which such petition under Section 137 of the Act, 2006 has to be filed before the prescribed Court of Law within thirty days from the date of declaration of the election result.

8. It would be pertinent to note here that in **Bibha Devi vs. the State Election Commission (Panchayat) [2017(1) PLJR 225]**, a Division Bench of this Court after taking into consideration the provision prescribed under Section 137 of the Act, 2006 and the Constitutional provisions has already held that recourse to a remedy under Article 226 of the Constitution would not be available to a person, who had contested the election if the process of election for Panchayat is concluded by declaration of result.

9. Apparently, the petitioner has failed to avail of the statutory remedy provided in law. As of date, even limitation for filing an election petition has expired. There is no provision under the Rules, 2006 for condoning the delay in filing the election petition. Thus, even the remedy under Section 137 of the Act, 2006 would not be available to the petitioner.

10. In **Anil Kumar Jha vs. State of Bihar and Others [AIR 2011 Patna 1]**, a Division Bench of this Court has already held that delay caused in filing an election petition cannot be condoned under the Limitation Act and since the Rule 106 of the Rules, 2006 do



not expressly provides any provision for condoning the delay, the court cannot condone the delay in filing the election petition.

11. In view of the discussions made above, I am of the considered opinion that this writ petition has no merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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