

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1064 of 2018

In
Civil Writ Jurisdiction Case No.14023 of 2018

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1. Sangita Kumari, Wife of Pravin Kumar, resident of Village + P.O.- Narayanpur Dedhapura, P.S.- Mahnar, District- Vaishali.
 2. Kusheshwar Paswan, Son of Dhoda Paswan, resident of Village + P.O. Allipur Hatta, P.S.- Mahnar, District- Vaishali, presently Up-Pramukh of Block Panchayat Samity Mahnar, P.O. and P.S.- Mahnar, District- Vaishali at Hajipur.
 3. Md. Nizam Raza @ Md. Nizam Raja, Son of Khudavakas Miyan, resident of Village + P.O.- Mahindawara, P.S.- Mahnar District- Vaishali.
 4. Kameshwar Singh, Son of Ram Bhajan Singh, Resident of Village + P.O.- Javoej, P.S. Mahnar, District- Vaishali.
 5. Bishwanath Patel, Son of Feku Roy, Resident of Village + P.O.- Karnauti, P.S.- Mahnar, District- Vaishali.
 6. Md. Tahir, Son of Md. Nawaji, Resident of Village + P.O. - Naurangapur, P.S.- Mahnar, District- Vaishali.
 7. Indu Kumari, Wife of Sanjay Kumar, Resident of Village- Darapur, P.O.- Gorigama, P.S.- Mahnar, District- Vaishali.
 8. Rama Devi, Wife of Tapshwar Singh, Resident of Village- Jagarnathpur, P.O.- Harpur, Fatikwara, P.S.- Mahnar, District- Vaishali.
 9. Nitu Devi, Wife of Kalesh Kumar Singh, Resident of Ward NO. 6, Village- Chakesho, P.S.- Mahnar, District- Vaishali.
 10. Khusbu Singh @ Khushbu Singh, Wife of Harisankar Singh, Resident of Village +P.O. Hasanpur, Junaid.
 11. Anju Devi, Wife of Kundan Kumar Singh, resident of village- Hasanpur, P.O.- Hasanpur Junaid, P.S.- Mahnar, District- Vaishali. Appellants are the members of Block Panchayat Samity Mahnar, Block Panchayat Samiti, Mahnar P.O. and P.S. Mahnar District- Vaishali at Hajipur 24.

... .. Appellant/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, Vaishali at Hajipur, District- Vaishali at Hajipur.
5. The Sub-Divisional Officer, Mahnar, District Vaishali at Hajipur.
6. The Block Development Officer, Mahnar-cum-Executive Officer, Block Panchayat Samiti, Mahnar, District- Vaishali at Hajipur.
7. Raju Kumar Chaudhary Son of not known to the petitioner.
8. Putul Devi, Wife of not known to the petitioner.
9. Pinki Devi, Wife of not known to the petitioner.
10. Basanti Devi, Wife of not known to the petitioner.
11. Neetu Devi, Wife of not known to the petitioner.
12. Lal Babu Rai, Son of not known to the petitioner. Respondent No. 7 to 12 are the members of Block Panchayat Samity, Mahnar through the Block



- Development Officer-cum-Executive Officer, Block Panchayat Samiti, Mahnar P.O. and P.S. Mahnar District- Vaishali at Hajipur 24.
13. The State Election Commission (Panchayat) Bihar, through the State Election Commissioner.
14. Sheela Devi, Wife of Sri Baldeo Rai, resident of Village and P.O. Hargovindpur, P.S.- Mahnar, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. S.B.K. Manglam, Advocate
Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

3 02-08-2018 This Letters Patent Appeal has been preferred by some of the private respondents of Civil Writ Jurisdiction Case No. 14023 of 2018 for setting aside the interim order dated 25.07.2018 in so far as while issuing notices to the private respondents, the learned Writ Court has directed that **“In the meantime, no election shall be held pursuant to the vacancy created due to removal of the petitioner from the post of Pramukh of Mahnar Block Panchayat Samiti.”**

At the outset, when the matter was called out Mr. S. B. K. Manglam, learned counsel representing the writ petitioners who are the private respondents in the present appeal has drawn attention of this Court towards Article 226 (3) of the Constitution of India and submits that in view of the mandate of



the Constitution, the appellants should have filed an application before the learned Writ Court for vacation or modification of the interim order. Although Mr. P. K. Shahi, learned Senior Counsel representing the appellants have tried to persuade us to entertain the present Letters Patent Appeal but we find ourselves unable to agree with the submissions of Mr. Shahi, learned Sr. Advocate.

Article 226 (3) of the Constitution of India reads as under:-

“Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the



last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”

Apart from the above provision, we also find that the kind of interim order passed by the learned Writ Court would not fall in any one of those categories enumerated by the Hon’ble Apex Court in paragraph 15 of the judgment of the Hon’ble Apex court in the case of **Midnapore Peoples’ Coop. Bank Ltd. and Others Vs. Chunilal Nanda and Others** reported in **(2006) 5 SCC 399** whereunder the Letters Patent Appeal may lie.

This Letters Patent Appeal is dismissed in limine. The appellants are at liberty to move before the learned Writ Court and pursue the matter in accordance with law.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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