

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8198 of 2017

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Jogeshwar Singh, Son of Ramsujesh Prasad, Resident of Village- Mahrogoria, Post-
Sanda, Police Station- Islampur, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar through State Election Commissioner (Panchayati Raj), Sone Bhawan, Birchand Patel Marg, Patna.
2. The District Magistrate, Nalanda.
3. The Block Development Officer, Islampur, Nalanda.
4. The District Election Officer, Nalanda.
5. The Panchayat Election Officer, Ichos, Islampur, Nalanda.
6. The Presiding Officer, Islampur, Nalanda.
7. The Ram Nagina Singh Son of late Kapildeo Singh, Resident of Village- Gopalganj, Post- Sanda, Police Station- Islampur, Panchayat-Ichos, District-Nalanda.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate Mr. Anil Kumar Singh, Advocate
For the Respondent/s	:	Mrs. Archana Meenakchee, GP-6 Mr. Karandeep Kumar, AC to GP-6
For the Respondent No.1	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh, Advocate
For the Respondent No.7	:	Mr. Sanjay Kumar @ Manu, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-05-2018

Heard learned counsel for the petitioner, learned



counsel appearing for respondent no. 7 and learned counsel appearing for the State Election Commission (for short 'commission').

2. In the instant writ petition, the petitioner has prayed for quashing the order dated 29.09.2016 passed in Election Case No. 3 of 2016 by the learned Munsif, Hilsa, Nalanda by which he has permitted the election petitioner (respondent no. 7 herein) to amend the election petition by adding necessary parties. The petitioner has also prayed for quashing the order dated 04.04.2017 passed in the said election case whereby the learned Munsif has rejected the petition dated 25.01.2017 filed by the petitioner raising objection by the petitioner against the maintainability of the election petition.

3. The undisputed facts of the case are that the Gram Panchayat election for the post of Mukhiya and other posts for Panchayat Ichos, Islampur, Nalanda was held on 10.05.2016. As per the notified election schedule, the date of filing of nomination was between 12.03.2016 and 19.02.2016, the date of withdrawal of nomination was 23.02.2016 and the date of counting of votes was 03.06.2016.

4. Respondent no. 7 filed an application for recounting of votes, which was held in his presence and officers of



the respondent State. After which, the petitioner was declared elected for the post of Mukhiya for Ichos Gram Panchayat, Islampur, Nalanda and he took oath on 26.06.2016. Thereafter, the respondent no. 7 preferred an election petition vide Election Case No. 03 of 2016 on 16.06.2016 with a prayer for cancelling the election of Ichos panchayat of Nalanda as also for recounting of the votes on the ground of irregularities in the election during the period of election. In the election petition apart from the petitioner seven others were made opposite parties out of whom 6 were government officials and one was the polling agent. Subsequently, the respondent no. 7 filed an application under Order I Rule 10(2) of CPC on 01.09.2016 for impleading six other contestants of the election as opposite parties. The said petition dated 01.09.2016 filed by the respondent no. 7 was allowed by the learned Munsif, Hilsa, Nalanda vide order dated 29.09.2016. After receipt of the notice in the election petition, the petitioner filed his written statement on 16.01.2017. Thereafter, he raised an objection of maintainability of the election petition by filing an application dated 25.01.2017. The learned Munsif, Hilsa, Nalanda vide order dated 04.04.2017 rejected the application of the petitioner dated 25.01.2017 holding the same to be not maintainable.

5. Assailing the aforestated orders dated 29.09.2016



and 04.04.2017, Mr. Rajesh Kumar Singh, learned counsel for the petitioner submitted that if an election petition has to be amended, if required, in respect to compliance of Section 137(3) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act') and Rule 106(2) of the Bihar Panchayat Election Rules 2006 (for short 'the Rules'), such petition ought to be filed within thirty days from the date of declaration of the election result. According to him, the provisions prescribed under Section 137 of the Act and Rule 106 of the Rules are mandatory in nature and the petition dated 01.09.2016 filed by the respondent no. 7 for impleading the other six contesting candidates as opposite parties in the election petition after more than two and a half months of declaration of the result of the election in question could not have been allowed. In support of his submission, he has placed reliance on judgments of this Court in **Anil Kumar Jha vs. State of Bihar [(2010) 4 PLJR 475]** and **Kameshwar Singh vs. Surya Narain Rai and Ors. [2009 (4) PLJR 722]**,

6. *Per Contra*, Mr. Sanjay Kumar Manu, learned counsel appearing for respondent no. 7 submitted that the petitioner has got no *locus standi* to challenge the order passed by the learned Munsif whereby he has permitted the respondent no. 7 to implead six more contesting candidates as opposite parties in the election petition. He submitted that the writ petition is also bad for the reason



that the petitioner has not impleaded all the contesting parties as respondents in the present writ petition. He submitted that the petitioner had indulged in corrupt practices and by committing fraud in collusion with the official respondents, he got himself declared as elected and, thus, the learned Munsif committed no error of law in allowing the petition filed by the respondent no. 7 for impleadment of certain contesting candidates who could not be made party due to inadvertence at the time of filing of the election petition. According to him, technicalities of law should not come in the way of doing substantial justice.

7. Mr. Sanjeev Nikesh, learned counsel appearing for State Election Commission, however, supported the contentions of the petitioner. He submitted that under the Act and Rules made therein, there is no provision of condonation of delay caused in filing an election petition. He submitted that the issue raised by the petitioner in the present case has already been decided in the case of **Kameshwar Singh (supra)** and the objections raised by the learned counsel for the respondent no. 7 are totally misconceived.

8. Having heard rival contentions made on behalf of the parties and perused the record, I find substance in the contention of the petitioner.



9. Sub-section (1) of Section 137 of the Act stipulates that the election to any office of a Gram Panchayat shall lie before such Munsif within whose jurisdiction such Gram Panchayat is situated. Sub-section (2) of Section 137 of the said Act provides that the petitioner shall join as respondent to his petition where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates.

10. For the sake of convenience sub-section (2) of section 137 of the Act is extracted hereunder:-

“Section 137 (2). Parties to the petition—A petitioner shall join as a respondent to his petition—

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and



(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

11. Thus, in terms of sub-section (2) of Section 137 of the Act, it is necessary that in case of recounting, the election petitioner ought to implead all the contesting candidates.

12. It would further be manifest from the reading of Rule 106 of the Rules that an election petition against any elected candidate has to be filed under Section 137 of the Act before the Court within thirty days from the date of declaration of the election results.

13. Sub-rule (2) of Rule 106 of the Rules also prescribes that where the petitioner, claims to declare the election of any of the returned candidates as void, all the contesting candidates other than the petitioner must be impleaded as respondents in the election petition.

14. For the sake of convenience Rule 106 of the Rules is extracted hereunder:-

“106. Election petition. - (1) An election petition against any elected candidate may be filed under section 137 of the Act before the prescribed Court of Law within thirty days from the date of



declaration of the election results.

(2) the following may be joined as respondents by the petitioner to his/her election petition -

(a) Where the petitioner, claims to declare the election of all or any of the returned candidate as void in addition to his/her claim for any other candidate to be legally elected, in such a case all the contesting candidates other than the petitioner; and where no such additional claim has been made, all the candidates, and,

(b) Any other candidate against whom allegation of any corrupt practices is made in the petition”.

15. In the matter of **Kameshwar Singh (supra)** this issue was considered in detail by this Court and after consideration of the facts and circumstances of that case, this Court held in para 10 to 12 as under:-

“10. On a consideration of the facts and circumstances of the case and the submissions made by learned Counsels for the parties, this Court finds sufficient force in the contention of learned Counsel for the petitioner. It is true that the provisions of the Bihar Panchayat Raj Act, 2006 read with the rules framed thereunder and those of the Representation of The People Act, 1951 are not exactly the same



since there is no comparable provision to section 86(1) of the Representation of the People Act, 1951 so far as the Bihar Panchayat Raj Act is concerned. However, the decision of the Supreme Court in K. Venkateswara Rao case (supra) was not given wholly in the context of section 86(1) of the R.P. Act, 1951 but it dealt also with the applicability of the general laws in the matter of trial of Civil suits. It has been clearly laid down in the said decision that while the powers in the matter of allowing amendments are quite wide but they are allowed subject to the law of limitation. It was specifically held that the election petition stands on a different footing and trial of such a petition and the powers of the Court in respect thereof are all circumscribed by the Act. It was further held that Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Limitation Act. In my opinion, the said observations of the Supreme Court, even apart from what has been held in regard to section 86(1) of the R.P. Act, 1951 apply with equal force to an election petition filed under the Bihar Panchayat Raj Act. There cannot be



importation of the provision of the limitation act into the provisions concerning the Election to the Panchayats when specific provision has been laid down limiting the filing of election petition within 30 days of the declaration of the result of the election. The clear effect of such a provision would therefore be that even in the absence of provisions like section of the Representation of the People Act, if at all necessary parties are to be impleaded the same must be done within the period of limitation of 30 days provided for the filing of an election petition under Rule 106 of the Bihar Panchayat Election Rules.

11. To the same effect is the decision of this Court in the Case of Neelam Kumari @ Neelam Devi case (supra) in which under similar circumstances, this Court had held that the provisions of section 137(2) and rule 106(2) were mandatory and if the same were not complied with, the election petition would be liable to be thrown out. Reference is made in para 23 of the said judgment to another decision of this Court in C.W.J.C. No. 10105 of 2006 where it was held that the period of 30 days for filing an election petition was mandatory notwithstanding the consequences of non-compliance have not been provided since the laws governing elections are special



laws and that the said judgment has been affirmed by a Division Bench in L.P.A. No. 243 of 2007.

12. In the aforesaid view of the matter, this Court is clearly of the view that the provisions of section 137(2) and rule 106(2) of the Act and Rules respectively are mandatory and the election petitioner ought to have impleaded the necessary parties within a period of 30 days from the declaration of the result of the election and in any case no application for amendment of parties after the mandatory period of 30 days can be entertained by the election tribunal.

(underlining mine)

16. In **Kameshwar Singh (supra)** taking into consideration the statutory provisions prescribed under Section 137(2) of the Act and 106(2) of the Rules, this Court has held as under:-

“In the aforesaid view of the matter, this Court is clearly of the view that the provisions of Section 137(2) and Rule 106 (2) of the Act and Rules respectively are mandatory and the election petitioner ought to have impleaded the necessary parties within a period of 30 days from the declaration of the result of the election and in any case no application for amendment of parties after



the mandatory period of 30 days can be entertained by the election tribunal.”

17. A Division Bench of this Court in the matter of **Anil Kumar Jha (supra)** held that Section 137 of the Bihar Panchayat Raj Act and Rule 106 of the Bihar Panchayat Election Rules make it clear that election petition has to be filed within the period of thirty days from the date of declaration of election results and there is no provision for enlargement of the prescribed period of limitation.

18. In view of the statutory provisions under the Act and the Rules and the precedents referred to above, this Court is of the considered opinion that there is no merit in the submissions made by the respondent no. 7. The arguments advanced by the learned counsel appearing for the respondent no. 7 are totally misconceived. He has not uttered a word in respect of the grounds stated in the writ petition in respect of the mandatory nature of the provisions under Section 137 of the Act and Rule 106 of the Rules.

19. In the result, the writ petition is allowed and the orders dated 29.09.2016 and 04.04.2017 passed by the learned Munsif are hereby set aside. He shall be required to examine the matter afresh and pass necessary orders in accordance with law in



the light of the observations made hereinabove.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2018
Transmission Date	NA

