

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.875 of 2018

In

Civil Writ Jurisdiction Case No.8198 of 2017

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Ram Nagina Singh son of Late Kapildeo Singh, R/o village- Gopalganj, Post-Sanda, P.S.- Islampur, Panchayat Ichos, District- Nalanda... .. Appellant

Versus

1. The State Of Bihar through the 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. Jogeshwar Singh, son of Ramsujesh Prasad, R/o village- Mahrogoria, Post-Sanda, P.S.-Islampur, District- Nalanda

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. Ajay -GA5

For the State Election Commission: Mr. Amit Srivastava, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 06-08-2018 The present Letters Patent Appeal has been preferred for setting aside the judgment dated 02.05.2018 passed by learned Single Judge of this Court in Civil Writ Jurisdiction Case No. 8198 of 2017.

By the impugned order the learned Single Judge has been pleased to set aside the order dated 29.09.2016 passed by learned Munsif, Hilsa, Nalanda in Election Case No. 3 of 2016 by which he had permitted the Election Petitioner (respondent no. 7 in the writ petition and appellant in the present appeal) to



amend the election petition by adding necessary parties. The petitioner before the learned Single Judge had also prayed for quashing of the order dated 04.04.2017 passed in the said Election Case by which the learned Munsif had rejected the petition dated 25.01.2017 filed by the writ petitioner raising objection by the petitioner against the maintainability of the election petition.

At the outset, Mr. Amit Srivastava, learned counsel representing the State Election Commission has taken a preliminary objection as to the maintainability of the Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court. Mr. Srivastava submits that in view of the judgment of the Hon'ble Supreme Court in the case of **M/s M.M.T.C. Limited v. Commissioner of Commercial Tax & Ors.** reported in **AIR 2009 SC 1349** and in the case of **M/s Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad** reported in **AIR 1999 SC 2423**, the Letters Patent Appeal cannot be maintained. It is submitted that in the present case the learned Single Judge of the High Court while considering the petition under Article 226 or 227 has exercised his jurisdiction under Article 227 only. Learned counsel submits that since in the present case the learned Single Judge has exercised only a supervisory



jurisdiction as after finding that the learned Munsif had passed the impugned order in violation of legal provision on the subject, the learned Single Judge has issued a writ of Certiorari and while setting aside the impugned orders the matter has been remanded to the learned Munsif Court for examining the whole matter afresh and pass necessary orders in accordance with law in the light of the observations made by the learned Single Judge in the preceding paragraph of the judgment under appeal.

On the other hand, learned counsel representing the appellants submits that the learned Writ Court could not appreciate that amendment petition was allowed no doubt after the prescribed statutory period of 30 days but it was with consent of other side and no objection was raised at the time when the learned Munsif passed the impugned order.

We have gone through the impugned judgment under appeal. It appears that the learned Single Judge was hearing the writ petition against the orders passed by the learned Munsif in the Election Suit. Challenge to the order of the learned Munsif was made in the light of Section 137 (3) of the Bihar Panchayat Raj Act, 2006 (in short hereinafter referred to as the Act) and Bihar Panchayat Election Rules, 2006 (in short hereinafter referred to as the Rules). It was the grievance of the writ



petitioner that the learned Munsif had allowed the amendment after the application was filed seeking such amendment to add certain parties as opposite party in the case after a period of 30 days a statutory period prescribed under the Act read with the Rules. It was submitted before the learned Writ Court that there are judgments in the case of **Anil Kumar Jha Vs. State of Bihar** reported in **2010 (4) PLJR 475** and **Kameshwar Singh vs. Surya Narain Rai and Ors.** reported in **2009 (4) PLJR 722** in which the statutory period prescribed under the Act read with the Rules has been found to be mandatory and it has been held that the Election Petitioner ought to have impleaded 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. The learned Writ Court has by placing reliance on the judgments on the subject allowed the writ application by quashing the impugned order.

In our opinion, by quashing the impugned orders passed by the learned Munsif and directing him to consider the matter afresh in the light of the observations made in the judgment, the learned Single Judge has only exercised his supervisory jurisdiction under Article 227 of the Constitution of



India and therefore, in view of the judgments of the Hon'ble Supreme Court referred hereinabove this Letters Patent Appeal cannot be said to be arising out of an original proceeding under Article 226 of the Constitution of India. It has been held by the judicial pronouncement that Article 227 of the Constitution of India is a remedy of Intra Court Appeal, in our opinion this remedy is not available in the present case where the learned Single Judge has exercised it's supervisory jurisdiction. The Letters Patent Appeal is thus, not maintainable and dismissed in limine.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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