

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.217 of 2018

- =====
1. Farhat Yasmin wife of Md. Javed Resident of village Mahapatiya, PS Bheja, District Madhubani, presently Mukhiya, Mahapatiya Gram Panchayat, Block Madhepur, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate-cum-District Election Officer (Panchayat), Madhubani, District - Madhubani.
2. The Sub-Divisional Officer, Jhanjharpur, District Madhubani.
3. The Block Development Officer, Madhepur-cum-Returning Officer (Panchayat), Madhepur Block, District - Madhubani.
4. Smt. Sweety Wife of Chandrashekhar Yadav Resident of Village Menhsa, PS Bheja, District Madhubani.
5. Veena Devi Wife of Shivkumar Sahu Resident of Village Mahapatiya, PS Bheja, District Madhubani.
6. Saida Khatoon Son of Abdul Wahid Resident of Village Mahapatiya, PS Bheja, District Madhubani.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ravi Ranjan, Adv.
For the State	:	Mr. Kameshwar Pd. Gupta- GP10 Ms Deepanjali Gupta, A.C. to GP-10
For the Respondent No.4	:	Mr. P.K. Shahi, Sr. Adv. Mr. Yashraj Bardhan, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-03-2018

Heard Mr. Ravi Ranjan, learned advocate for the petitioner and Mr. P.K. Shahi, learned Senior Advocate appearing for the respondent no.4.

2. This writ petition has been filed by the petitioner with a prayer to quash the order dated 13.11.2017 passed by the learned Munsif, Jhanjharpur-cum-Election Tribunal in Election Petition No. 09 of 2016 by which the petition dated 15.09.2017 filed by the petitioner for recalling the order dated 31.08.2017 passed in the



election petition to close the evidence on behalf of the writ petitioner has been rejected.

3. The facts of the case are not in dispute. The State Election Commission had initiated Panchayat Election, 2016 in Gram Panchayat Raj, Mahapatiya in which the petitioner and respondent nos. 3 to 6 had filed their nomination papers to contest the election. After scrutiny, the nomination of the petitioner and the respondent nos. 3 to 6 was accepted. The date of polling was fixed on 26.05.2016 and date of counting was fixed on 08.06.2016. After due process of counting, the petitioner was declared as the returned candidate by the Returning Officer and accordingly certificate was issued in her favour whereafter the respondent no.4 filed an election petition before the learned Munsif, Jhanjharpur-cum-Election Tribunal wherein prayer for recounting was made. In the said election petition the petitioner was impleaded as opposite party no.4. She appeared before the Tribunal on 05.09.2016 and filed her written statement on 05.12.2016. The petitioner was examined on 03.08.2017 and 09.08.2017 and subsequently she did not appear for three consecutive dates whereafter the Election Tribunal vide its order dated 31.08.2017 closed the evidence on her behalf. The petitioner filed an application on 15.09.2017 before the Tribunal for recall of the order dated 31.08.2017 whereby evidence on her behalf had been closed. It was stated that after her evidence she had fallen ill for which she took



some local medication under the impression that it is normal fever and will settle down soon but her condition worsened in course of treatment as a result of which she was taken to Patna and, therefore, she could not produce the witnesses on three consecutive dates. It was contended that if the order dated 31.08.2017 is not recalled, she would suffer irreparable loss. However, vide impugned order dated 13.11.2017 the Tribunal rejected the prayer of the petitioner.

4. Assailing the aforesaid order dated 13.11.2017, learned counsel for the petitioner submitted that non-production of witnesses on three consecutive dates was neither intentional nor deliberate. Under an unavoidable and compelling circumstance, on account of ill-health, the petitioner failed to do pairvi on three dates and for that reason if she is not allowed to lead evidence, it would be a great travesty of justice.

5. On the other hand, Mr. P.K. Shahi, learned Senior Advocate appearing for the respondent no.4 submitted that the instant writ petition has been filed just in order to linger the proceeding of the election petition. He submitted that the intention of the petitioner is to delay the disposal of the Election petition. She had appeared before the Election Tribunal on 05.09.2016 only after publication of notice in local newspaper. He submitted that after 09.08.2017 next date fixed was 17.08.2017 when the parties appeared but the petitioner sought time. On 25.08.2017 also she sought time and on



31.08.2017 she again sought time. Thus, there was clear intention to delay the proceedings of the election petition. He submitted that even subsequent to 31.08.2017 on two dates, i.e. 07.09.2017 and 12.09.2017 neither any petition was filed nor any prayer was made by the petitioner for recall of the order dated 31.08.2017 and a petition in this regard was belatedly filed on 15.09.2017. He further contended that the petitioner has not submitted list of witnesses to prove her case and thus, no illegality was committed by the Tribunal in rejecting her prayer.

6. In reply, learned counsel for the petitioner has drawn my attention towards the petition dated 15.09.2017 filed by the petitioner, which has been brought on record as Annexure-P-3. Referring to the aforestated petition, it is submitted that the petitioner had given name of Md. Soyab Alam, Md. Ziaullah and Md. Obait as witnesses for their evidence in the election petition as they had participated in the counting of votes.

7. At this Stage, Mr. P.K. Shahi, learned Senior Advocate appearing for the respondent no.4 submitted that if the petitioner produces the witnesses within a limited time fixed by the Court, the respondent no.4 would have no objection to their examination before the Election Tribunal.

8. After hearing the parties and considering the fair stand taken on behalf of the respondent no.4, the impugned order dated



13.11.2017 passed by the Election Tribunal in Election Petition No. 09 of 2016 is set aside. The petitioner is directed to produce her aforestated witnesses, namely, Md. Soyab Alam, Md. Ziaullah and Md. Obait for their examination on her behalf on or before 26th March, 2018. In case of such production, the Election Tribunal shall permit them to be examined and cross-examined on day to day basis. In case the petitioner fails to produce the witnesses within the time stipulated above, the Election Tribunal shall be at liberty to close the evidence on behalf of the petitioner and proceed with the disposal of the election petition as early as possible, preferably within two months from the date of production of the aforestated witnesses.

9. With the aforesaid observations and direction, the writ petition is disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20-03-2018
Transmission Date	

