

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.487 of 2019

Sanjay Kumar Son of Radha Krishan Singh Resident of Village-Madaraha,
P.O.-Dhrubdiha, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur

... .. Petitioner

Versus

1. Lalan Prasad Singh Son of Late Sarba Nand Singh Resident of Village-Amroja, P.O.-Pasaur, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
2. Sanjay Singh Son of Ram Naresh Singh Resident of Village-Kasamaria, P.O.-Dhrubdiha, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
3. Persuram Sah Son of Bachan Sah Resident of Village-Thakuri, P.O.-Thakuri, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
4. Hirdyanand Ram Son of Raghunandan Ram Resident of Village-Lilari, P.O.-Lilari, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
5. Jai Prakesh Patha, Son of Dadan Pathak, Resident of Village-Dhrubdiha, P.O.-Dhrubdiha, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
6. Geeta Devi Wife of Baliram Sah Resident of Village-Pararia, P.O.-Dhrubdiha, P.S.-Chrpokhari, Block-Chrpokhari, District-Bhojpur
7. Returning Officer Cum-B.D.O., Block-Chrpokhari, P.S.-Charpokhari, District-Bhojpur through Principal secretary Department of General Administration, Government of Bihar, Patna

... .. Respondents

Appearance :

For the Appellant/s : Mr. Madan Jeet Kumar
For the Respondent/s : Mr. Shailesh Kumar, A.C. to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-08-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present application preferred under Article 227 of the Constitution of India, the petitioner has challenged the order dated 05.11.2018 passed by the learned Sub-Judge, Piro (Bhojpur)-cum-Election Tribunal in Election Petition No. 01 of 2016 by which he has directed the respondent no.7, the Returning Officer-



cum-Block Development Officer, Charpokhari, Bhojpur to produce certain documents in the aforesaid election petition.

3. Learned counsel appearing for the petitioner submitted that the documents so summoned are not relevant for adjudication of the case. He contended that the respondent 1st set has maliciously filed Election Petition No.01 of 2016 to harass the petitioner as also the government officials. Without any legal evidence, he has alleged that certain mal practices had taken place in the election held for the Member of Panchayat Samiti No.2 of Gram Panchayat Thakuri, Charpokhari in the district of Bhojpur.

4. On the other hand, learned counsel appearing for the State submitted that on the application filed by the respondent no.1, the Tribunal has called for the voter list of booth nos. 8 and 9 and diary of the Presiding Officer of booth no.13. He contended that the requirement for calling the voter list of booth nos. 8 and 9 arose because the election petitioner has alleged that name of six voters is common in the voter list of booth nos. 8 and 9 and, on the day of polling on 02.05.2016, they had casted double votes on two polling stations in favour of the returned candidate. The votes cast by the same voter on two polling stations are void votes and are not countable in view of Section 126A of the Bihar Panchyat Raj Act. The requirement for calling the diary of the Presiding Officer



of booth no. 13 arose as it has been contended by the election petitioner that on booth no. 13 in all 398 votes were cast but the Returning Officer has counted 402 votes. He submitted that in order to find out the correctness of the facts alleged by the election petitioner, the Tribunal thought it proper to call for the voter list and the diary of the Presiding Officer. The order is neither without jurisdiction nor perverse.

5. Having heard learned counsel for the parties and perused the record, I find substance in the submission of learned counsel for the State.

6. Order XVI, Rule 14 of the Code of Civil Procedure (for short 'CPC') provides that if the court, at any time thinks it necessary, may, of its own motion, summon any witness to give evidence, or to produce any document in his possession on a day appointed, and may examine him as a witness or require him to produce such document.

7. Similarly, Order XVI, Rule 6 of the CPC provides that any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.



8. Since the aforesaid provisions of the Code of Civil Procedure give discretionary power to the court to summon any document, in case, it comes to the conclusion that it is necessary to resolve the dispute between the parties. Hence, no illegality can be found with the order impugned whereby the Returning Officer has been directed to produce the voter list of two booths and the diary of Presiding Officer of one booth. The order is also not without jurisdiction.

9. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.08.2019
Transmission Date	

