

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3411 of 2018

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Mojibur Rahman, S/o Sheikh Jamil, Presently Mukhiya of Gram Panchayat Raj Sirauna, P.O. - Kathmalia, P.S. - Shikarganj, District - East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principle Secretary, Panchayat Raj Department, Govt. of Bihar, New Secretariat, Patna.
2. The State Election Commissioner, State Election Commission, Sone Bhawan, 3rd Floor, Beer Chand Patel Path, Patna.
3. The State Election Commission through its Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd Floor, Veer Chand Patel Path, Patna-80001.
4. The Collector-cum-District Magistrate-cum-District Election Officer (Panchayat), District - East Champaran (Motihari).
5. The District Panchayat Raj Officer, East Champaran, District - East Champaran (Motihari).
6. The Block Development Officer Piparikothi-Cum-Returning Officer, Gram Panchayat Raj, Sirauna, District-East Champaran (Motihari).
7. Neelam Devi, W/o Pramod Kumar, R/o Village - Sirauna, P.O. - Sirauna, P.S. - Shikarganj, District - East Champaran (Motihari).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.
Mr. Uday Pratap Singh, Adv.
Mr. Rohit Raj, Adv.

For the State : Mr. Prabhat Ranjan, AC to GP-6

For the State Election Commission: Mr. Amit Shrivastava, Adv.
Mr. Sanjeev Nikesh, Adv.

For the Private Respondent no.7: Mr. S.B. K. Mangalam, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 04-11-2019 This writ application has been preferred for setting aside the judgment/order dated 01.02.2018 passed by learned Munsif-cum-Election Tribunal, Sikarahana, East Champaran in Election Petition (Case) No.06/2016. By the impugned judgment, the election of the petitioner as Mukhiya of Gram



Panchayat Raj, Sirauna has been set aside and a direction has been issued for re-polling of booth no.306, ward no.13(alone) and respondent no.4 i.e. the Collector-cum-District Magistrate-cum-District Election Officer (Panchayat), District - East Champaran (Motihari) has been directed to ensure the re-polling within a period of two months from the date of receipt/production of a copy of the order and declare the final result after considering total votes polled by all the contesting candidates.

During pendency of the writ application, some Interlocutory Applications have been filed. I.A.No.2200 of 2018 has been filed for adding relief seeking issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the order dated 16.03.2018 issued by the Secretary, State Election Commission, Bihar whereby he declared the date (01.04.2018) for re-polling of booth no.306 (ward no.13). This Court vide its order dated 30.03.2018 allowed the interlocutory application and stayed the operation of the order dated 16.03.2018 issued by the Secretary, State Election Commission, Bihar.

I.A. No.3826 of 2018 has been filed by respondent no.7 with a prayer either to hear the writ petition on priority



basis or to vacate the order dated 30.03.2018. The said I.A. was taken up for consideration on 17.01.2019 and after hearing the parties, this Court vacated the interim order dated 30.03.2018. The Secretary, State Election Commission, Bihar was permitted to notify a fresh date of re-polling and go ahead with the re-polling, however any action taken in this regard was made subject to result of the writ application.

Again I.A. No.4 of 2019 has been filed for quashing the portion of the order dated 22.01.2019 issued by the Joint Election Commissioner, State Election Commission, Bihar directing the District Magistrate-cum-District Election Officer (Panchayat), East Champara, Motihari to the extent that the same relates to “counting of votes and publication of result of Mukhiya of Gram Panchayat Raj Sirauna”. The said I.A. was placed before this Court and vide order dated 01.02.2019 this Court directed the State Election Commission not to declare the result after re-polling of the booth till disposal of the writ application.

I.A. No.5 of 2019 has been filed by the respondent no.7 for vacating the order dated 01.02.2019 and vide I.A. No.6 of 2019 the writ petitioner has prayed for initiation of a contempt proceeding against the State Election Commission, the



Returning Officer-cum-Circle Officer, Chiraiya as according to him they have willfully and deliberately violated the order of this Court dated 01.02.2019 and published the result.

Today, the matter has been taken up for final consideration and learned counsel for the petitioner as well as respondents have been heard at length.

The case of the election petitioner (respondent no.7), before the Election Tribunal was that when the ballot boxes containing the polled votes for election of Mukhiya in the Gram Panchayat Raj, Sirauna were in the custody of the returning officer and the ballot boxes were placed for counting, it was found that the ballots of booth no.306, ward no.13 of the Gram Panchayat Raj, Sirauna inside the three boxes were lying under water. The election petitioner claimed that in all the three ballot boxes of booth no.306 there were water and the ballots were not in a condition to be counted. The Counting Supervisors and Counting Assistants were asked to get the ballot papers dried and thereafter the returning officer decided to take a view as to whether the ballot papers are in condition of counting or not. The election petitioner claimed that her agent opposed this move of the returning officer because about 100 ballot papers were so damaged that they were not at all in a position of



counting. The election petitioner alleged that on the direction of the returning officer the Counting Supervisors forcibly counted 341 ballot papers of booth no.306, yet they could not count 57 ballot papers because they were completely destroyed. The writ petitioner had been declared elected by margin of 24 votes only and, therefore, it was the contention of the election petitioner that the election of the writ petitioner was void because of rejection of a large number of votes polled in favour of petitioner in booth no.306. She, therefore, prayed for setting aside of the election of the writ petitioner who was respondent first party before the Tribunal and further prayed for a direction for polling either in the entire constituency or in booth no.306, ward no.13 in the Gram Panchayat Raj, Sirauna. She had not made any prayer for declaring herself a returned candidate.

The writ petitioner who was opposite party no.1 appeared before the Tribunal and filed a written statement. He denied the allegations made by election petitioner and took a stand that not a single ballot paper was damaged. He denied that 100 ballot papers were completely damaged and also contested the submission of the election petitioner that her agent had raised a protest before the returning officer.

The Election Tribunal framed as many as seven issues



for consideration. Issue no.V as framed reads as under:-

“Whether the result of the election for the post of Mukhiya of Gram Panchayat Raj-Sirauna held on 06.05.2016 has been materially affected by water was found in all three ballot boxes used for counting in Booth no.-306, ward no.-13?”

This issue was the most important issue before the Tribunal. In course of evidence, the election petitioner produced five witnesses, four of them were the counting agents, one was a formal witness and the election petitioner herself deposed as PW-3. As many as six exhibits were placed on behalf of the election petitioner. PW-1 Mukhtar Alam was the counting agent of other candidate of Mukhiya namely Abdul Jabbar. PW-2 Santosh Kumar was also the counting agent of the petitioner. P.W.-3 Rajkishore Dinkar has in course of his cross-examination identified the signature (Ext.1) on the petition (Ext.1/A) filed by counting agent.

The respondent no.1-writ petitioner brought 13 witnesses and the opposite party no.2 who was the returning officer, Chiraiya had himself come to depose in course of trial. The opposite party no.1 also proved Exhibit A i.e. Compact disc of the recording of the counting for the post of Mukhiya of Gram Panchayat Raj- Sirauna held on 07.06.2016 (with



objection), through a formal witness Surendra Kumar (OPW-2).

In course of evidence, the witnesses produced by the election petitioner fully supported her case in examination-in-chief. They stated that water was found in the ballot boxes of booth no.306, ward no.13 and for that reason the ballot papers were in such a bad condition that those were not in a position to be counted. Exhibit 1 and 1/A were duly proved by PW-3 and in course of cross-examination no material contradiction could be taken from these witnesses of the election petitioner. Learned Tribunal found from a bare perusal of written objection filed on behalf of O.P. 2nd party as well as from the statement of the returning officer that the rejected ballot papers of booth no.306 were not rejected by the returning officer on any of the grounds mentioned in Rule 75 of the Bihar Panchayat Election Rules, 2006 for rejection of the ballot papers rather they were rejected by the returning officer because they were not in a position of counting. Learned Tribunal though exhibited the Compact disc of recording of counting which was proved by the opposite party nos.2 and 3, it has also recorded that it is not complete recording of the counting, but Exhibit A shows that the water was found in ballot boxes used for counting in booth no.306 and maximum papers were in a bad condition. Exhibit 2 has been



considered which shows that other candidates for the post of Zila Parishad had also filed an application before the returning officer on 07.06.2016 which was received by the same person of Block office, thus Exhibit-1 to 1/A and 2 to 2/A were found corroborating each other.

The learned Tribunal found that there were contradictions in the deposition of the witnesses produced on behalf of the opposite party no.1-writ petitioner. The deposition of the returning officer has been discussed along with Exhibit '6' which is letter no.06 dated 09.01.2017 issued by the District Panchayat Raj Officer, East Champaran, Motihari showing that on complaint being made regarding water found in ballot boxes of booth no.306 the State Election Commission was informed and from Exhibit '6' it also appeared that for the alleged lapses, charges had been framed against the concerned Block Development Officer, Chiraiya in Form-Ka and the file had been referred to the District Magistrate, East Champaran at Motihari for its approval. The Election Tribunal had also called for a report from the District Panchayat Raj Officer, East Champaran, Motihari vide letter no.03 dated 16.01.2018 with regard to Exhibit 6 and received the same from District Panchayat Raj Officer, East Chamapran, Motihari vide letter



no.46 dated 18.01.2018 and on perusal thereof the Tribunal took a prima-facie view that the authority under whose supervision and control the election process was completed, he himself did not consider the election as a fair and impartial election. For all these reasons, the Election Petition was allowed vide impugned judgment and order by issuing the directions as stated hereinabove.

In course of hearing, Mr. Sandeep Kumar, learned counsel for the petitioner has taken this Court through the entire impugned judgment of the learned Tribunal. His first contention is that the election petition suffers from non-joinder of the necessary parties. Learned counsel submits that one of the contestants namely Reshma Devi was not impleaded as opposite party, therefore, the election petition was fit to be dismissed on this ground alone. In this connection, he has relied upon a judgment of the learned coordinate Bench of this Court in the case of Rozy Kumari Vs. Zulekha Khatoon reported in 2009(2) PLJR 614. He has then submitted that the reliance placed by the learned Tribunal on the electronic evidence in form of Compact disc which was exhibited as Exhibit A (with objection) is not in accordance with law inasmuch as in terms of Section 65 B(4) of the Indian Evidence Act no certificate was produced while



placing the electronic evidence as an exhibit.

Mr. Mangalam, learned counsel for the respondent election petitioner submits that in his written statement filed before the learned Tribunal the opposite party no.-1 petitioner never raised an issue of non-joinder of necessary parties, therefore, the learned Tribunal did not frame any issue with regard to the non-joinder of the parties. It is submitted that at this stage this issue cannot be allowed to be agitated, moreover the submissions of learned counsel for the petitioner is not supported by the provisions of the Bihar Gram Panchayat Raj Act, 2006. Learned counsel submits that the election petitioner in the present case was not looking for a declaration that she herself or any other candidate had been duly elected. It is submitted that in the judgment relied upon by learned counsel for the petitioner, the facts were totally different which may be seen from paragraph 3 of the said judgment. It is in the said case the election petitioner had prayed for declaring her a duly elected member of the Panchayat Samiti. In that context and the facts the learned coordinate bench of this Court made the observations. It is further contended that the issues with regard to the Exhibit A i.e. Compact disc is also wholly irrelevant inasmuch as it may be found from the evidence of the returning



officer that the opposite party no.1 had taken the risk to cross-examine the opposite party no.2 who had come to support his case. The opposite party no.2 has admitted in paragraph '12' of his examination-in-chief that he has made a statement that some ballot papers were wetted which were dried and then had been counted and in fact the statement of the returning officer (O.P.No.2) supports to a great extent the case of the election petitioner that there were water in the ballot boxes of both no.306.

Having heard learned counsel for the parties and on a careful perusal of the records, this Court finds that the issue of non-joinder of parties was not taken up in the written statement of opposite party no.1 and no issue in this regard was framed by the learned Election Tribunal. Moreover this Court is satisfied with the settled legal proposition that in a case where the election petitioner is not looking for a declaration that she should be declared the winning candidate, the election petition cannot be thrown out on the ground of non-joinder of one of the contesting candidate. In this case, the election petitioner had lost to the writ petitioner by a margin of 24 votes and it was her case that at least 57 ballot papers of booth no.306 were so damaged that they were rejected as those were not in a position to be



counted. In course of argument, this Court has gone through the depositions of the witnesses, particularly evidence of returning officer (O.P.No.2). A perusal of the evidence of opposite party no.2 shows that he admits in his examination-in-chief that “यह कि कुछ मत पत्र भीगा हुआ था जिसे सुखा कर गिनती की गई ।”

Again in his cross-examination by non-else then the opposite party no.1- writ petitioner, the returning officer has deposed in paragraph 22 and 23 as under:-

“22. मेरे द्वारा लिखित कथन के कंडिका 12 में लिखा गया है कि मतपेटी में पानी नहीं था लेकिन भीगा था । भीगने की वजह मैं स्पष्ट नहीं कह सकता हूँ । किन्तु शीलन हो सकता है ।

23. काउंटिंग के समय किसी मतपत्र को नहीं सुखाया गया था, ऐसी बात नहीं है । मतपत्र को टेबल पर रख कर, गिनने की स्थिति में पुनः उसको गिना गया ।”

The learned Tribunal has discussed the evidences of the witnesses produced on behalf of the election petitioner. They have supported the case of the election petitioner and learned Tribunal has recorded a finding on perusal of the written objection of the O.P. 2nd party as well as the statement of the returning officer (O.P.No.2) that the rejected ballot papers of booth no.306 were not rejected by the returning officer on any of the grounds mentioned in Rule 75 of the Bihar Panchayat Election Rules, 2006 for rejection of the ballot papers rather



they were rejected by the returning officer because they were not in a position of counting. The learned Tribunal has rightly relied upon Exhibit 1/A which was the petition dated 07.06.2016 filed by Santosh Kumar, the election agent of the election petitioner on which the signature of the clerk of the Block was present and the same was identified by PW-5 Devendra Ram. The head clerk namely Ajay Kumar had received the petition filed by the election agent Santosh Kumar on 07.06.2016 at 3.50 PM. In the said petition, the election agent had categorically stated and had informed that there were water in all three ballot boxes. He had also made a request to cancel the poll of booth no.306 and re-poll. Exhibit 1/A has been corroborated by Exhibit 2 which is another petition filed by another candidate for the post of Zila Parishad. Another clinching evidence is Exhibit '6' which is the letter no.06 dated 09.01.2017 issued by the District Panchayat Raj Officer, East Champaran, Motihari. The learned Tribunal has recorded a finding that "After perusal of exhibit -6, it is evidently clear that on the complaint being made regarding water found in ballot boxes of booth no.-306 of Sirauna Gram Panchayat submitted to the State Election Commission, the allegations were found to be proved. It is also born out from the said Exhibit that on aforesaid ground, charges



have been framed against the concerned Block Development Office, Chiraiya in Form-Ka and the file had been referred to the District Magistrate, East Champaran at Motihari for its approval. Further on the said allegation the learned court has called for the report from District Panchayat Raj Officer, East Champaran, Motihari vide letter no.03 dated 16.01.2018 with regards to exhibit-6 and received the same from District Panchayat Raj Officer, East Champaran, Motihari vide letter no.46 dated 18.01.2018. After perusal of said report, the learned court rightly held that “it prima facie shows that under whose supervision and control the election process was completed itself did not consider this election as a fair and impartial election. Thus the allegation of the election petitioner that water was found from the ballot boxes of booth no.-316 finds support from the as referred in the exhibit-6.....”

On the face of the aforesaid findings of the learned Election Tribunal, this Court is of the considered opinion that the impugned judgment and order passed by the Election Tribunal in Election Petition (Case) No.06/2016 needs no interference. The writ application is thus dismissed and the State Election Commission is directed to declare the result and take other consequential action. This disposes of the writ application



as well as all Interlocutory Applications.

So far as I.A. No.6 of 2019 is concerned, it has been filed for initiation of a contempt proceeding. A contempt proceeding cannot be taken up in the present writ application. Thus, all other issues raised therein may be agitated by the respondents, if so advised, in a duly constituted application.

(Rajeev Ranjan Prasad, J)

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