

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1072 of 2020

Chandra Prakash Son of Shambhunath, Resident of Ward No.5, Naubatpur,
P.O. and P.S.-Naubatpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The District Magistrate-cum-District Election Officer (Municipality), Patna, District- Patna
3. The Executive Officer, Nagar Panchayat, Naubatpur, P.O. and P.S.-Naubatpur, District- Patna
4. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner,
5. The Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam Mrs. Anita Kumari
For the State	:	Mr.Rajiv Roy (GP-1)
For the State E.C.	:	Mr. Amit Shrivastava Mr. Girish Pandey
For the Nagar Parishad	:	Mr. Ranjeet Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date : 06-03-2020

The instant writ petition has been filed for quashing the Short Notice inviting Tender No. 01/2019-20, issued by the respondent no. 3 and published in the daily Hindi News Paper 'Dainik Jagaran' on 11.12.2019 as also the Short Notice inviting Tender No. 02/2019-20, published in the daily Hindi newspaper 'Hindustan' on 28.12.2019, whereby and whereunder tender has been invited for 87 different schemes to be carried out under the



territorial jurisdiction of Naubatpur Nagar Panchayat notwithstanding the fact that the State Election Commission vide its Memo dated 05.12.2019 has already notified the general election in Naubatpur Nagar Panchayat.

The short argument made by the learned counsel for the petitioner is that since the election commission had sent the programme of the election for Naubatpur Nagar Panchayat and other Panchayats vide its letter dated 05.12.2019 to the Registration Officer (Municipality)-cum-Sub-Divisional Officer, Patna City, Danapur and Paliganj, it would be deemed that the State Election Commission had commenced the process for holding of elections, hence the model code of conduct would come into operation, thus the tender notices could not have been published by the respondent no. 3, thus the short notice inviting tender, as aforesaid, are illegal and fit to be set aside.

In this regard, the learned counsel for the petitioner has relied upon a judgment of the *Hon'ble Punjab & Haryana High Court* rendered in the case of *Harbans Singh Jalal vs. Union of India* reported in (1997) 116 PLR 778, paragraph no. 17 whereof is reproduced herein below:-

“17. [In A. Neelalohithadasan Nadar v. George Mascrene, 1994 Supp \(2\) Supreme Court Cases 619](#) their lordships stated the principle of purity of election must have its way. The Election Commission is not



only to see that free and fair election is to be held, but the purity of election should also be observed. What is meant by purity of election? According to us, it means the election should not only be free from corrupt practices but also free from evil practices. In Ghasi Ram v. Dal Singh, *A.I.R. 1968 Supreme Court 1191*, Hidayatullah, J., (as his lordship then was), observed, -

"Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided.' From this statement of law, it is evident that activities on the eve of election should also be for the conduct of a free and fair election. "Eve of election" can only be the period prior to the date of notification of election. By the date of notification, the process of election starts. It is not with reference to the date after process of commencement of election, their lordships referred to the period 'one the eve of election'. So, according to us, during the eve of election also, the Election Commission should ensure that nothing which tends to interfere with the conduct of free and fair election, takes place. Viewed in this light, we are of the considered view that Election Commission should take necessary steps for conduct of free and fair election even before the date of the issue of the notification. "

Per contra, the learned counsel appearing for the State Election Commission has submitted that the State Election Commission had merely sent a recommendation to the Secretary, Urban Development and Housing Department, Bihar,



Patna for issuing a notification regarding election of office-bearer of Nagar Panchayat, Naubatpur and others vide letter dated 05.12.2019 and in light of the said letter dated 05.12.2019, the District Election Officer (Municipality)-cum-District Magistrate had issued a letter dated 12.12.2019, addressed to the Registration Officer (Municipality)-cum-Sub-Divisional Officer, Patna City, Danapur and Paliganj for starting preparation for holding of General Elections, 2020 for the said Nagar Panchayats. It is further submitted that on the basis of the said recommendation dated 05.12.2019, the State Government issued a notification under Section 441 of the Bihar Municipal Act, 2007 dated 28.01.2020, fixing the date of election of office-bearers of the concerned Municipalities/Panchayats. It is thus submitted by the learned counsel for the respondent State Election Commission that the model code of conduct had become operative with effect from the date of notification announcing the schedule of election i.e. 28.01.2020, hence the short notice inviting tender in question, which have been published on 11.12.2019 and 28.12.2019, being prior in time to the aforesaid notification dated 28.01.2020 would not be hit by the model code of conduct, which has come into operation with effect from 28.01.2020.



The learned counsel for the State Election Commission has referred to a judgment reported in ***AIR 1978 SC 851 (Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors.)***, paragraph nos. 121 & 122 whereof are reproduced herein below:-

“121. As already pointed out, it is well-settled that election covers the entire process from the issue of the notification under [section 14](#) to the declaration of the result under [section 66](#) of the Act. When a Poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefor, with the amended date is passed as an integral part of the electoral process. We are not concerned with the question whether the impugned order is right or wrong or invalid on any account. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the elections. Although that is not always decisive, the impugned order itself shows that it has been passed in the exercise of power under [Article 324 \(1\)](#) and [section 153](#) of the Act. That is also the correct position. Such an order, relating, as it does, to election within the width of the expression as interpreted by this Court, cannot be questioned except by an election petition under the Act.

122. What do the appellants seek in the writ application ? One of their prayers is for declaration of the result on the basis of the Poll which has been cancelled. This is nothing short of seeking to establish the validity of a very important stage in the election process, namely,



the poll which has taken place, and which was countermanded by the impugned order. If the appellants succeed, the result may, if possible, be declared on the basis of that poll, or some other suitable orders may be passed. If they fail, a fresh poll will take place and the election will be declared on the basis of the fresh poll. This is, in effect, a vital issue which relates to questioning of the election since the election will be complete only after the fresh poll on the basis of which the declaration of the result will be made. In other words, there are no two elections as there is only one continuing process of election. If, therefore, during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The appellants, then, will not be without a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll. In other words, when the appellants question the election after declaration of the result on the basis of the fresh poll, the election court will be able to entertain their objection with regard to the order of the Election Commission countermanding the earlier poll, and the whole matter will be at large. If, for example, the election court comes to the conclusion that the earlier poll has been wrongly cancelled, or the impugned order of the Election Commission is otherwise invalid, it will be entitled to set aside the



election on the basis of the fresh Poll and will have power to breathe life into the countermanded poll and to make appropriate directions and orders in accordance with law. There is, therefore, no foundation for a grievance that the appellants will be without any remedy if their writ application is dismissed. It has in fact been fairly conceded by counsel for the other side that the election court will be able to grant all appropriate reliefs and that the dismissal of the writ petition will not prejudice the appellants.”

The learned counsel for the State Election Commission has next referred to a judgment reported in ***A.I.R. 1982 SC 983 (Jyoti Basu & Ors. vs. Debi Ghosal & Ors.)***, paragraph no. 8 whereof is reproduced herein below:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory creating it. Concepts familiar to Common Law and Equity must remain



strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the [Representation of the People Act, 1951](#), different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the [Representation of the People Act 1951](#) and again, no such election may be questioned except in the manner provided by the [Representation of the People Act](#). [So the Representation of the People Act](#) has been held to be a complete and self contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the [Scheme of the Act](#). We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say? ”

Another judgment relied upon by the learned counsel for the State Election Commission is the one reported in **AIR**



1980 2977 (Election Commission of India vs. Ashok Kumar & ors.), paragraph no. 14 whereof is reproduced herein below:-

“14. The term “election” as occurring in [Article 329](#) has been held to mean and include the entire process from the issue of the Notification under [Section 14](#) of the Representation of the People Act, 1951 to the declaration of the result under [Section 66](#) of the Act.”

I have heard the learned counsel for the parties and perused the materials on record as also gone through the judgments referred to herein above by the learned counsel for the parties.

At this juncture, it would be relevant to reproduce Section 441 of the Bihar Municipal Act, 2007, herein below:-

*“441. **Notification of Municipal Election.** — The Governor on the recommendation of the State Election Commission, for constituting the Municipalities fix date or dates through notification published in the State Gazette and it shall be expected that the electors may elect the office bearers of the Municipalities in accordance with the provisions of this Act:*

Provided that no such notification shall be issued prior to six months before the date fixed for election.

Provided also that no such notification shall be required to be issued to hold elections, against such posts, which after general election have subsequently become vacant due to resignation, death, removal from post, judicial order or some other



reason. The State Election Commission, as per its convenience, after consultation with the concerned District Magistrate and intimation to the Government, shall be free to take action to hold election against such posts as sooner as may be.”

This Court finds that the State Election Commission, Bihar, Patna had written a letter dated 05.12.2019 to the Secretary, Urban Development & Housing Department, Bihar, Patna making recommendations for conducting elections to Naubatpur Nagar Panchayat and other Nagar Panchayats since the tenure of the office-bearer of the concerned Municipality was coming to an end and the same required re-constitution. This Court further finds that in pursuance to the recommendations made by the State Election Commission as also in pursuance to the letter dated 12.12.2019 issued by the District Magistrate, Patna to the Registration Officer (Municipality)-cum-Sub-Divisional Officer, Patna City, Danapur and Paliganj, the Deputy Secretary to the Government, Urban Development and Housing Department, Government of Bihar, Patna had issued a notification dated 28.01.2020 under Section 441 of the Bihar Municipal Act, 2007 notifying the general elections for the Nagar Panchayats, namely, Janakpur Road (Sitamarhi), Naubatpur (Patna) and Bikram (Patna), fixing 23.02.2020 as the date of polling. Admittedly, according to the



model code of conduct published by the State Election Commission, Bihar for the purposes of Municipalities General Election, 2017, the model code of conduct would be in force from the date of notification of the elections up to the completion of the votes counting process.

Considering the law on the subject matter as also taking into account the aforesaid judgments rendered by the Hon'ble Apex Court, there is no doubt that elections to the Municipalities pertaining to Janakpur Road (Sitamarhi), Naubatpur (Patna) and Bikram (Patna) have been notified by the State Government only on 28.01.2020 wherein the date of polling has been mentioned as 23.02.2020, hence the model code of conduct would come into force with effect from 28.01.2020, thus the short notice inviting tender in question, as aforesaid, having been published on 11.12.2019 and on 28.12.2019, respectively are not hit by the model code of conduct.

At this juncture, it would be relevant to mention that the judgment referred to by the learned counsel for the petitioner in the case of Harbans Singh Jalal (supra), does not lay down any law on the subject matter of the present case, hence is of no relevance, as far as the present case is concerned.



Having regard to the facts and circumstances of the case and for the grounds mentioned herein above, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	27.02.2020
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