

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7906 of 2019

Umakant Yadav, son of Late Ram Sagar Yadav, resident of Village-Pipara,
Police Station-Bahera, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development, Govt. of Bihar, Patna
2. The Principal secretary, Urban Development, Govt. of Bihar, Patna
3. The State Election Commission, Bihar through the Secretary, State Election Commission, Bihar, Patna
4. The State Election Commission, Bihar through The Secretary, State Election Commission, Bihar, Patna
5. The Joint Election Commissioner, Bihar Patna
6. The District Magistrate-Cum-District Election Officer (Municipal), Darbhanga.
7. The Deputy Election Officer, Darbhanga.
8. The Sub-Divisional Officer, Benipur, Darbhanga.
9. The Block Development Officer, Benipur, Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Waliur Rahman, Advocate Mr. Jay Prakash Singh, Advocate
For the Respondent/s	:	Mr.Kinkar Kumar, SC-9 Mr. Yogesh Kumar, AC to SC-9
For State Election Com.	:	Mr. Kumar Sachin, Advocate
For Resp. No. 11	:	Mr. Ravi Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 03-03-2020 The present writ petition was heard on

08.01.2020 and an order was passed remitting the case

to the State Election Commissioner for writing out a

fresh order after affording opportunity of hearing to the

concerned parties and after seeking all necessary



information towards just disposal of the complaint lodged by the petitioner. The Court had by that order also fixed a time limit for completing the enquiry and passing an order.

While passing the aforesaid order, this Court did not discern that respondent Nos. 10 and 11 were also impleaded as parties. The names of respondent Nos. 10 and 11 were printed on another page and therefore no notice was issued to respondent No. 11.

When the petitioner made an attempt to have the order modified in as much as the names of respondent Nos. 10 and 11 were requested to be added in the cause title, Mr. Ravi Verma, learned advocate for respondent No. 11 appeared and submitted that had notice been issued to respondent No. 11, he would have assisted the Court in the aforesaid case.

Apart from this, it was submitted by Mr. Verma that respondent No. 11 was a necessary party because the complaint was directed against her and once the



complaint was dismissed by the State Election Commissioner on the ground of there not being any conclusive evidence either with respect to correctness of assertion made by the complainant/petitioner or respondent No. 11, the entire complaint was liable to be rejected.

It is precisely for this reason that the case was directed to be listed under the heading "To Be Mentioned" today for giving hearing to respondent No. 11 afresh.

Mr. Verma, learned advocate for the respondent No. 11 has pointed out that from para 3 of the writ petition, it would appear that the petitioner has arrogated to himself a position where a complaint against respondent No. 11 could have been lodged and adjudicated. Para 3 of the writ petition declares that petitioner is a resident of Ward No. 12 and therefore he deserves to be elected as Ward Member.

Mr. Verma, learned advocate submits that this



is factually incorrect as the seat on which the respondent No. 11 has been elected is a reserved seat for backward class candidate and the petitioner does not fall in that category.

This argument has been advanced only to subscribe to the proposition that if the petitioner could not have contested for the election, any complaint in that regard would be treated as a complaint of an outsider or perhaps, an interloper, and in any case, even if there was no prohibition of filing such complaint before the concerned authority, the petitioner definitely was an outsider for this writ petition to have been entertained. Unless the petitioner was a candidate himself, this writ petition would not have been maintainable as such writ petition would have been in the nature of public interest which is not the roster of this Court.

Mr. Verma is wrong in making such assertion.

There is no prohibition on a person, who cannot contest the election, to raise a complaint against the



candidature of an elected person before the concerned authority. In that event, if such a complaint was entertained and dismissed, it has surely given an occasion for the petitioner to approach this Court against the order of the concerned authority.

In that view of the matter, the writ petition cannot be taken to be in public interest and the petitioner has definite locus to challenge the order of the State Election Commissioner.

In any view of the matter, this Court has not passed any order against respondent No. 11 but has only remitted the case to the State Election Commissioner for writing out a fresh order after verifying the facts from ancillary sources and collecting evidence in that regard.

This Court had not appreciated the approach of the State Election Commissioner in simultaneously holding that the report was not clear; rather ambiguous and side by side, dismissing the complaint on that



ground alone.

This was not acceptable to the Court and therefore the order was set aside and the matter was remitted to the State Election Commissioner for writing out a fresh order.

The learned counsel for the petitioner has informed this Court that a petition in the light of the direction given by order dated 08.01.2020 has already been filed before the State Election Commissioner, in which the respondent No. 11 also has appeared.

In that view of the matter, there is no requirement of any modification or variation in the order dated 08.01.2020.

All that this Court directs is that in the order dated 08.01.2020 in the array of parties, the names of respondent Nos. 10 and 11 be added and this order as well as the modified order dated 08.01.2020 be uploaded forthwith.

In order to enable the parties to wrest their



claim effectively, the time for filing the application and responding to such application before the State Election Commissioner is extended by a further period of four weeks, to be counted from today.

(Ashutosh Kumar, J)

Shageer/-

U			
---	--	--	--

