

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16866 of 2017

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Raushani Devi Wife of Ajay Ravidas, resident of Village- Paura, Post- Paura,
P.S.- Town Nawada, District Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Panchayati Raj, Government of Bihar, Patna.
2. The District Magistrate cum Election Officer, Nawada.
3. The Block Development Officer-cum-Returning Officer, Sadar Block, Nawada, District- Nawada.
4. The Secretary, State Election Commissioner, Bihar.
5. Neha Kumari, Wife of Dipak Kumar, resident of Villlage- Jamuawan, Post- Kadirganj, P.S.- Town Police Station (Nagar Thana), District- Nawada.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 17939 of 2017

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Neha Kumari W/o Deepak Kumar, Resident of Village- Jamuawan, P.S.-
Town Nawada, District- Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar through Collector-cum-District Returning Officer, Nawada
2. The Chairman, State Election Commission, Bihar, Patna.
3. The Secretary, State Election Commission, Bihar, Patna.
4. The S.D.O. Sadar Nawada.
5. The D.P.R.O. Nawada.
6. Prabhakar Singh, Returning Officer-cum-Block Development Officer, Block- Nawada Sadar, P.S.- Town Nawada, District-Nawada
7. Smt. Raushani Devi, W/o Ajay Ravidas, Resident of Village- Paura, P.S.-



Town Nawada, District- Nawada.

8. Uma Devi, W/o Barun Singh, Resident of Village- Ghostama, O.P.-
Kadirganj, P.S.- Nawada, District- Nawada.
9. Kanti Devi, W/o Ravindra Yadav, Resident of Village- Paura, O.P.-
Kadirganj, P.S.- Nawada, District- Nawada.
10. Nirmala Devi, W/o Nageshwar Mahto, Resident of Village- Maya Bigha,
O.P.- Kadirganj, P.S.- Nawada, District- Nawada.
11. Putul Devi, W/o Ramswroop Prasad, Resident of Village- Ghostama, O.P.-
Kadirganj, P.S.- Nawada, District- Nawada.
12. Peyari Devi, W/o Arjun Chauhan, Resident of Village- Mangura, O.P.-
Kadirganj, P.S.- Nawada, District- Nawada.
13. Wartti Devi, W/o Satyendra Prasad Yadav @ Satyendra Yadav, Resident of
Village- Harla, O.P.- Kadirganj, P.S.- Nawada, District- Nawada.
14. Sunita Devi, W/o Bind Yadav, Resident of Village- Maya Bigha, O.P.-
Kadirganj, P.S.- Nawada, District- Nawada.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16866 of 2017)

For the Petitioner/s	: Mr. Sidhendra Narayan Singh, Advocate
For the Respondent/s	: Ms. Archana Meenakshee -GP-6
For State Election Comm.	: Mr. Amit Srivastava, Sr. Advocate Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 17939 of 2017)

For the Petitioner/s	: None
For the Respondent/s	: Mr. Prashant Pratap -GP-2 Mr. Gyan Shanker (AC to GP 2)
For State Election Comm.	: Mr. Amit Srivastava, Sr. Advocate Mr. Sanjiv Nikesh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 23-07-2021

Since both the aforesaid writ petitions involve



common question of law as also arise out of a judgment dated 22.09.2017, passed in Election Case No. 8 of 2016, by the learned Sub-Judge 1st, Nawada, the same had been made analogous almost at the very inception, hence, have been heard finally yesterday and today and a common judgment is being dictated.

2. Both the writ petitions have been filed for quashing the judgment dated 22.09.2017 passed in Election Case No. 8 of 2016, by the learned Sub-Judge 1st, Nawada whereby and whereunder the election of the petitioner of the first case to the post of Member of Panchayat Samiti of Gram Panchayat Raj, Paura, District-Nawada, has been declared void. Thus, the petitioner of the first case has prayed for allowing her writ petition, setting aside the aforesaid judgment dated 22.09.2017 and restoring her as the member of the Panchayat Samiti in question since she is the winning candidate. On the contrary, the petitioner of the second case has prayed for declaring her as the elected candidate, as a consequence of the



election of the petitioner of the first case having been declared void by the aforesaid judgment dated 22.09.2017, passed in Election Case No. 8 of 2016.

3. The brief facts of the case are that a notification was published by the State Government regarding conduct of election of the three tier Panchayat Raj System in the year 2016, for the various posts at the Gram Panchayat level including the post of member of the Panchayat Samiti. The present case pertains to election to the post of member of Panchayat Samiti of Gram Panchayat Raj, Paura, Nawada Sadar Block, District-Nawada, bearing election area no. 24. The petitioners of both the aforesaid cases had filed their nomination for the post of member of the aforesaid Panchayat Samiti along with others and after due verification of nomination of candidates, nine candidates including the petitioners of the aforesaid cases were found eligible to contest the election, which was notified to be held on 22.5.2016. On 22.05.2016, polling had taken place



and then, counting was held at a centre, namely, Kanhai Lal Sahu College, Nawada, on 30.05.2016. After completion of the counting of votes, a detailed result of the votes secured by the said nine candidates was published on 30.5.2016 & the petitioner of the first case was declared elected as member of the Panchayat Samiti, Gram Panchayat Paura, Nawada Sadar, Nawada and a certificate was issued to the petitioner of the first case dated 30.05.2016. Thereafter, the petitioner had taken oath as Member, Panchayat Samiti, Paura, Nawada and had started working on the said post.

4. The petitioner of the second case, who is also Respondent No. 5 in the first case, had then filed an election petition bearing Election Case No. 8 of 2016, before the learned court of Sub-Judge 1st-cum-Election Tribunal, Nawada, on 29.06.2016, inter alia, seeking a declaration that the election of the petitioner of the first case, who is also Respondent No. 7 in the second case, is void and had consequently prayed that she be declared as



the winning candidate.

5. The learned court of Sub-Judge 1st, Nawada, by a judgment dated 22.09.2017, has set aside the election of the returned candidate i.e. the petitioner of the first case on the post of member of Panchayat samiti, Paura, Nawada, on the ground of corrupt practices having been committed for winning the election as also recounting of ballot papers have been done in violation of the statutory and mandatory provision and consequently the election of the petitioner of the first case to the post of member of Panchayat Samiti of Nawada from Gram Panchayat Raj, Paura has been declared to be void.

6. At this juncture, it may be relevant to mention here that during the pendency of the present writ petitions, the State Election Commission, Bihar, Patna, had come out with a letter dated 21.12.2018, whereby the bye-election for the post of member of the panchayat samiti of the Gram Panchayat, Paura, Nawada, had been announced



and the election was scheduled to be held on 10.03.2019. The said action of the State Election Commission was sought to be challenged by the petitioner of the first case by way of I.A. No. 1 of 2019, leading to this Court passing an order dated 08.03.2019 whereby and whereunder, though the election has been permitted to be held, but the result of the election has been directed to be kept in a sealed cover.

7. The learned counsel for the petitioner of the first case, Sri Sidhendra Narayan Singh, has submitted that the impugned order dated 22.09.2017, passed by the learned court below is bad in the eyes of law on the ground of non-joinder of necessary parties, alone. The learned counsel for the petitioner has referred to the election petition filed by the petitioner of the second case dated 29.06.2016, before the learned court of Sub-Judge 1st-cum-Election Tribunal Nawada to show that only two persons have been arrayed as Respondents i.e. the Returning Officer-cum-Block Development Officer, Nawada and the elected



candidate i.e. the petitioner of the first case. It has been submitted that there were a total number of nine candidates, who had contested the election in question, hence, the remaining seven candidates were required to be joined as respondents to the election petition. In this connection, the learned counsel for the petitioner has referred to Section 137 of the Bihar Panchayat Raj Act 2006, which is reproduced herein below:-

“137. Election Petition. -(1) The election to any office of a Panchayat or a Gram Katchahry shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of a *Gram Panchayat* or Gram Katchahry is under dispute, the election petition shall lie before such Munsif within whose jurisdiction such *Gram Panchayat* or Gram Katchahry is situated and if the election to any office of *Panchayat Samiti* or to a *Zila Parishad* is under dispute, the election petition shall lie before such sub-Judge within whose jurisdiction such *Panchayat Samiti* or *Zila Parishad*,



as the case may be, is situated.

(2) "*Parties to the petition.*-A petitioner shall join as a respondent to his petition-

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

8. The learned counsel for the petitioner has also referred to Rule 106 (2) of the Bihar Panchayat Election Rules 2006, which is reproduced herein below:-

"106(2). the following may be joined as respondents by the petitioner to his/her election petition-

(a) Where the petitioner, claims to declare the election of all or any of the re-



turned candidate as void in addition to his/her claim for any other candidate to be legally elected, in such a case all the contesting candidates other than the petitioner; and where no such additional claim has been made, all the candidates, and,

(b) Any other candidate against whom allegation of any corrupt practices is made in the petition.”

9. Thus, the learned counsel for the petitioner has submitted that the election petition filed by the petitioner of the second case before the learned Sub-Judge 1st-cum-Election Tribunal, Nawada, was / is not in consonance with the statutory requirements of Section 137(2) of the Bihar Panchayat Raj Act, 2006 and Rule 106(2) of the Bihar Panchayat Election Rules, 2006, hence, the election petition should have been dismissed at the very inception. The learned counsel for the petitioner has also referred to the written statement filed by the petitioner of the first case in the aforesaid Election Case No. 8 of 2016 to show that the issue of non-joinder of parties was



specifically raised in paragraph no. 2 thereof and the learned court below had also framed a specific issue to the said effect as Issue No. 2, which reads as follows:-

“whether this case is bad for necessary parties.”

It is submitted that the learned court below has dealt with the aforesaid issue in paragraphs no. 46 and 47 of the impugned judgment dated 22.09.2017 and has in an illegal and weird manner held that since in the election petition the applicant has only sought for relief of declaration of setting aside of the election of the returned candidate and not for declaring her as a returned candidate, the election petition, in absence of other candidates of the election in question, is maintainable. In this connection, the learned counsel for the petitioner has referred to three judgments i.e. the one rendered by a coordinate Bench of this Court in the case of **Neelam Kumari @ Neelam Devi vs. The State of Bihar**



& Ors., reported in **2008 (3) PLJR 187**, the one rendered by a coordinate Bench of this Court in the case of **Kameshwar Singh vs. Surya Narayan Rai & Ors.**, reported in **2009 (1) BBCJ 500** and the one rendered by a coordinate Bench of this Court in the case of **Renu Devi vs. The State of Bihar & Ors.**, reported in **2014(3) PLJR 311**.

10. The other issue raised by the learned counsel for the petitioner of the first case is that the only ground available to the petitioner of the second case for declaring the election to be void was / is that any corrupt practice has been committed by a returned candidate or his/her agent or by any other person with the consent of a returned candidate or his agent, however, it would be apparent from the election petition filed by the petitioner of the second case that no plea of corrupt practice having been committed by the petitioner of the first case or her agent has been taken and in fact, the learned court below by the impugned judgment dated 22.09.2017 has illegally, in paragraph no. 48 of the said judgment,



set aside the election of the petitioner of the first case on the ground that corrupt practice has been committed by her whereas there is neither any evidence nor any discussion nor any pleading with regard to the nature of corrupt practice having been committed by the petitioner of the first case, thus, it is submitted that the impugned judgment dated 22.09.2017 is not only contrary to the records of the case but also smacks of non-application of mind by the learned judge. In this connection, the learned counsel for the petitioner has referred to Sections 139 and 141 of the Bihar Panchayat Raj Act, 2006.

11. The learned counsel for the Respondent-State has not disputed the position, as is existing in law.

12. The learned Senior Counsel for the Respondent-State Election Commission, Sri Amit Shrivastava, has submitted that the impugned judgment dated 22.09.2017 passed by the learned court below is a perverse and an illegal order inasmuch as except the returned candidate, no



other candidate has been made party in the aforesaid election petition by the petitioner of the second case, hence, the learned court below could not have proceeded further to examine the grievance of the election petitioner, thus, the impugned judgment dated 22.09.2017 is fit to be set aside on the ground of non-joinder of parties alone. It is further submitted that there is no allegation of any corrupt practice having been committed by the petitioner of the first case, thus, the learned Judge has come to a wrong conclusion, in the impugned judgment dated 22.09.2017, for the purposes of setting aside the election of the returned candidate i.e. the petitioner of the first case on the ground that she had committed corrupt practice, although neither there is any evidence nor there is any discussion about the same in the entire judgment dated 22.09.2017.

13. Now coming to the second case, it may be pointed out that when this case was taken up for hearing on 29.06.2021, the learned counsel for the petitioner of the second case was present and with



the consent of the learned counsel for the parties, the aforesaid two cases were directed to be listed on 22.07.2021 at 2:15 pm., for final disposal. On 22.07.2021, the learned counsel for the petitioner of the first case, the learned Senior Counsel for the Election Commission and the learned counsel for the State were heard at length. However, it transpired that the learned counsel for the petitioner of the second case is not appearing, hence, the case was adjourned to 23.07.2021 i.e. today and the learned court master was directed to convey to the learned counsel for the petitioner of the second case regarding the next date of hearing and in case the learned counsel for the petitioner of the second case did not respond to the phone call of the learned court master, link of the present virtual proceeding was directed to be sent on the email and whatsapp of the said learned counsel for the petitioner of the second case. Today, the learned court master has informed this Court that the link of the present proceeding has already been sent to the learned counsel for the petitioner



of the second case, however, this Court finds that despite adequate measures having been taken, in the interest of justice, the learned counsel for the petitioner of the second case has failed to appear before this Court, may be since the petitioner of the second case has lost interest in the present case in view of the fact that the term of the members of the Gram Panchayat has also come to an end and now fresh elections are due.

14. Nonetheless, this Court finds that the issue to be decided in the aforesaid two cases is very plain and simple i.e. (i) regarding non-joinder of parties and (ii) regarding corrupt practices having or having not been committed by the petitioner of the first case.

15. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the petitioner of the second case while filing the election petition bearing Election Case No. 8/2016 has only made the returned candidate i.e. the petitioner of the first case as a



party Respondent to the election petition, however, the other seven candidates, who had contested the election, have not been joined as party respondents to the election petition, hence, the election petition filed by the petitioner of the second case ought to have been rejected on the ground of non-joinder of necessary parties to the election petition, however, the learned court below in the impugned judgment dated 22.09.2017 has illegally held that since the relief of the petitioner of the second case is being confined to setting aside the election of the returned candidate, the election petition is not bad for non-joinder of parties. This Court finds that the finding of the learned court below in paragraphs no. 46 and 47 of the impugned judgment dated 22.09.2017 is perverse, in view of Section 137(2) of the Bihar Panchayat Raj Act 2006 and Section 106(2) of the Bihar Panchayat Election Rules, 2006 and on this ground alone, the impugned judgment dated 22.09.2017 is fit to be set aside. The law in this regard is no longer res intergra inasmuch as this



issue, regarding an election petition being not maintainable in absence of all the contesting candidates being parties to the election petition, has already been decided conclusively in the cases of **Neelam Kumari @ Neelam Devi** (supra), **Kameshwar Singh** (supra) and **Renu Devi** (supra).

16. The other issue regarding the petitioner of the second case, having neither raised any allegation/plea of any corrupt practice having been committed by the petitioner of the first case nor there being any evidence to the said effect nor there being any discussion about the nature and type of corrupt practices having been committed by the petitioner of the first case, in the impugned judgment dated 22.09.2017, shall also not detain this Court any further inasmuch as it is apparent from the materials on record, especially from the election petition filed by the petitioner of the second case on 29.06.2016, that neither any plea of corrupt practices has been raised nor the nature of corrupt practice committed by the petitioner has



been mentioned and moreover, in the impugned judgment dated 22.09.2017, neither any evidence has been dealt with nor any discussion has been made regarding any sort of corrupt practices having been committed by the petitioner of the first case and abruptly, in last paragraph i.e. in paragraph no. 48 of the impugned judgment dated 22.09.2017, the election of the returned candidate i.e. the petitioner of the first case, on the post of member of Panchayat Samiti, Gram Panchayat Raj, Paura, Nawada, has been set aside on the ground of corrupt practice having been committed by the returned candidate. This Court finds that the said finding of the learned court below is neither based on any evidence nor is supported by any discussion, whatsoever in the entire judgment dated 22.09.2017, muchless backed by any pleading in the election petition, hence the impugned judgment dated 22.09.2017, is grossly erroneous, perverse, illegal and unsustainable in the eyes of law, being contrary to the provisions contained in Sections 137, 139 and 141 of the



Bihar Panchayat Raj Act, 2006 and Rule 106 (2) of the Bihar Panchayat Election Rules 2006.

17. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the judgment dated 22.07.2019 passed by the learned Sub-Judge 1st -cum-Election Tribunal, Nawada in Election Case No. 8 of 2016 is set aside. Consequently, the first writ petition i.e. CWJC No. 16866 of 2017 (Raushani Devi Vs. The State Of Bihar & Ors.) stands allowed while the second writ petition bearing CWJC No. 17939 of 2017 (Neha Kumari Vs. The State Of Bihar & Ors.) stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.10.2021
Transmission Date	NA

