

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7140 of 2022

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Rubi Singh wife of Sri Hemant Kumar Singh @ Hemant Kumar, resident of Village and P.O. Tajpur Patkhauliya, P.S. Keshariya, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The Bihar State Election Commission (Panchayat) 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The Secretary, The Bihar State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
3. Nirmala Devi wife of Binod Gupta, Resident of Village- Dhekahan, P.O. Kuer Dhekahan, P.S. Keshariya, District- East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K Manglam, Advocate
	:	Mr. Awnish Kumar, Advocate
For the SEC	:	Mr. Girish Pandey, Advocate
For the Respondent no.3	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 16-11-2022

Heard Mr. S.B.K Manglam, learned counsel for the petitioner; Mr. Girish Pandey, learned counsel for the State Election Commission and Mr. Raghwanand, learned counsel for the respondent no. 3.

2. The writ petition has been filed for following reliefs:

“(I) For issuance of an appropriate writ in the nature of Certiorari for quashing of a part of the judgment and order dated 18.04.2022 passed by



Sri Sumit Kumar Singh, the learned Civil Judge (S.D.)-10, East Champaran at Motihari in Election Petition No. 06 of 2021, whereby and whereunder the learned Sub-Judge has been pleased to reject the plaint of the election petition except for the pleadings in connection with improper acceptance of nomination paper of Respondent no. 3 by the Returning Officer of the impugned election on the ground that the pleadings other than the pleadings in connection with improper acceptance of nomination paper of Respondent no. 3 does not make out a case triable under Section 139 and 140 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act).

(II) For a declaration that if in the other paragraphs of the election petition, it was the case of the election petitioner that the result of election was declared without counting of votes in absence of candidates or their Counting Agents, it was a case triable under Section 139(1)(d) (iv) of the Gram Panchayat Act since Election Law does not contemplate for preparation and declaration of



result of election without counting of votes in the presence of the candidates or their representatives.

(III) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the learned Election Tribunal for framing of issues based upon the pleadings of the parties and decide the case in accordance with law after permitting the parties to adduce their oral and documentary evidence in support of their respective case.

(IV) For issuance of any other appropriate writ/writs, order/ orders, direction / directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The basic grievance of the petitioner is that though she had approached the Election Tribunal in an election petition for setting aside the election of the respondent no. 3 who has been declared to be the successful candidate pursuant to election held for Constituency No. 31 of Zila Parishad of East Champaran, but the Court below has by the order impugned directed that the suit will proceed limited to only the improper acceptance of the nomination of the respondent no. 3 whereas it ought to have gone into all other aspects which are equally



important, like there being no permission for even one polling agent to be present during counting when the EVMs were brought and actual counting was done. Learned counsel for the petitioner submitted that the relevant rule permits that the candidate or his / her agent would be allowed to be present during unsealing of the EVMs and counting, but in the present case no agent was allowed and only after the counting was completed, they were asked to come inside and final result was informed to them.

4. Learned counsel for the respondent no. 3 submitted that though she had also filed CWJC No. 7528 of 2022 which by order dated 16.08.2022 was directed to be listed along with the present case, but unfortunately the same was dismissed due to non-compliance of a peremptory order. However, he submits that even he is aggrieved by the order impugned, but for a different reason, inasmuch as, she had filed a petition for rejection of the entire claim but part rejection of the claim is erroneous for the reason that there cannot be bifurcation or part acceptance of the pleadings since the same are one and complete.

5. Having heard learned counsel for the parties and with their agreement, the writ petition is being disposed of in the



following terms.

6. The order impugned is set aside and the Election Tribunal before whom the case is pending shall hear the case in its entirety on merits. The Tribunal shall also reframe the issues in accordance with law after hearing the parties.

7. It is observed that the Court has not expressed any opinion on the merits of the matter.

8. Further, the Court expects that the parties would cooperate and the proceedings would be taken to their logical conclusion expeditiously and preferably within a period of six months.

(Ahsanuddin Amanullah, J)

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

