

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.305 of 2023

=====

Shaila Devi Wife of Alakhdeo Yadav Resident of Village Lachumanwa, P.O.-
Sonaha, P.S. Palnaua, Block Raxaul, District East Champaran.

... .. Petitioner/s

Versus

1. Birendra Kumar Jha Son of Late Gopalji Jha Resident of Village Semari,
P.O. Sonaha, P.S. Palanwa, Block Raxaul, District East Champaran.
2. Sunil Pandey Son of Late Ramashankar Pandey Resident of Village-
Bilaspur, P.O.-Sonaha, P.S. Palnaua, Block Razaul, District East Champaran.
3. Gagandeo Yadav Son of Late Mahanth Yadav Resident of Village
Lachumanwa, P.O.-Sonaha, P.S. Palnaua, Block Raxaul, District East
Champaran.
4. Nandlal Yadav Son of Raghunath Rai Resident of Village Lachumanwa,
P.O.-Sonaha, P.S. Palnaua, Block Raxaul, District East Champaran.
5. Election Officer (Panchayat)-Cum-Block Development Officer, Raxaul,
Block-P.O.-P.S. Raxaul, District East Champaran.
6. District Election Officer (Panchayat)-Cum-District Magistrate, Motihari,
East Champaran.
7. Bihar State Election Commission (Panchayat), 3rd Floor, Son Bhawan,
Birchand Patel Path, Patna through the Election Commissioner.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Advocate.
For the Respondent No.1	:	Mr. Dharendra Kumar Jha, Advocate.
For the Respondent No.7	:	Mr. Sanjeev Nikesh, Advocate.
	:	Mr. Girish Pandey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-08-2023

Heard Mr. Sumeet Kumar Singh, learned counsel for
the petitioner, Mr. Dharendra Kumar Jha, learned counsel for
respondent no.1.

2. The petitioner has been declared successful for the
post of Mukhiya, Gram Panchayat Raj, Laxmipur, on being
aggrieved by the order dated 27.09.2022 passed in Election



Case No.1 of 2022, R—02/2022 by the learned Civil Judge J.D.-cum-Munisf, Raxaul at Motihari, whereby the application filed by the petitioner under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, has been dismissed, preferred the present writ application, *inter alia*, on the ground that there is no corrupt practice being alleged in the Election Petition, there is no cause of action stated in the entire petition, the grounds raised by the petitioner has not been dealt with properly and without assigning any reason for dismissal of the application held that there are other grounds for cancellation of election.

3. Learned counsel for the petitioner submits that the learned Civil Judge-JD-cum-Munsif, Raxaul at Motihari, having heard the parties at length, held that since the application has been filed under Section 139(1)(d) of the Bihar Panchayat Raj Act, 2006 (for brevity, 'the Act of 2006') for cancellation of the election results and the rules prescribed under CPC under Order VII Rule 11 will not be applicable and, therefore, the application should be dismissed.

4. It is submitted that a bare perusal of the order passed by the learned court below, it would be manifest that the learned court below has failed to appreciate that the application filed under Order VII Rule 11 read with Section 151 was with



regard to dismissal of the plaint but neither there is any reason assigned for dismissal of the same nor any reason is given as to why in absence of any cause of action in the plaint, the election petition is maintained. Further, the learned court below has completely failed to discuss the grounds raised with regard to maintainability and continuation of the election petition by the petitioner herein and has not discussed the issue where she has raised that no allegation of corrupt practices being involved and thus, under this background, the election petition cannot be entertained. The petitioner in support of her case also made reliance upon the judgments of the Supreme Court in **Kailash v. Nanhku and Ors. [(2005) 4 SCC 480]**, **Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe [(1995) 5 SCC 347]** and **Vishnu Kant Sharma v. Chief Election Commissioner and Ors. [MANU/MP/2296/2019]**.

5. On the other hand, learned counsel appearing on behalf of Private Respondent No.1, submits that the impugned order has been passed taking note of the provision, especially Section 139 of the Act of 2006, which stipulates the grounds for declaring an election to be void. The learned Election Tribunal has rightly taken note of Section 139(d), which clearly specifies that even in case of improper reception, refusal or rejection of



any vote or reception of any vote which is void, raised before the Election Tribunal due to which the result of the election materially affects, in such circumstances the election petition is maintained. Section 139(1)(d)(iv) also makes it clear that even in the case of non-compliance with the provisions of this Act or of any rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void, can also be a ground to maintain the election petition. In course of the argument, learned counsel representing Private Respondent No.1 also submits that after the impugned order having been passed in the aforementioned election case, the learned court below has proceeded further and almost, all the witnesses of the plaintiff have been examined and as per his information, one or two witnesses of the other side are left to be examined. Thus, the matter has become infructuous in view of the subsequent development.

6. Having heard the parties, *prima facie*, the issue with regard to the application of the Civil Procedure Code in election matters is concerned, the same has been answered by the Division Bench of this Court in the case of **Jageshwar Rai v. State of Bihar & Ors. [2006 SCC OnLine Pat 452]**, wherein it has been held that not only the principle but even the



procedure, including the provision of amendment, prescribed in the code will be applicable in such election matters, except those which are specifically barred by any provision of the Act or the Rule under which the elections were held.

7. It is needless to observe that Rule 109 of the Act of 2006 clearly stipulates that the competent court of law shall hear the election petition in the manner prescribed by the Civil Procedure Code 1908.

8. In the case of **Mamta Devi v. The State of Bihar & Ors.[(2016) 4 PLJR 258]**, in sum and substance, it has been held by a Co-ordinate Bench of this Court that not only the principle but every provision prescribed in the Code would be applicable in election matters except those which are specifically barred by the provisions of the Act and the Rules under which the election petitions were filed. It has also been observed that in a given case, if required, even the provisions of Order XXXIX Rule 1 read with section 151 of the Code can also be applied in principle because there is no provision which specifically bars its application.

9. So far as the legal position with regard to the applicability of Civil Procedure Code is concerned, the same has already been discussed above and, in the opinion of this Court,



the order of the learned Munsif, dated 27.09.2022 to the extent, it relates to non-applicability of the Order VII Rule 11 of the CPC is concerned, the same is not proper and correct in absence of any specific bar of its applicability. However, so far as the merit of the case is concerned, this Court does not find any reason or occasion to interfere in the matter as the materials/averments placed in the plaint filed by the election petitioner (respondent no.1), is suffice to constitute an election dispute which may materially affect the result of the election. If the material placed on record through the plaint gives cause of action to proceed further, there is no reason or occasion to abort the same at the threshold. This Court also cannot lose sight of the fact that the plaintiff witnesses have already been examined and few of the witnesses of the other side are only remained left to be examined.

10. In view thereof, the writ petition sans any merit and accordingly, it is dismissed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2023.
Transmission Date	NA

