

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17533 of 2023

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Rita Devi W/o Sanjiv Kumar Singh, R/o Village- Tetri, Ward no.- 06, Tetari,
Block- Naugachhia, District- Bhagalpur, Bihar-853204.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The State Election Commission, through its Secretary, Bihar.
3. The District Magistrate- cum- District Election Officer (Panchayat), Bhagalpur, Bihar.
4. The Block Panchayati Raj Officer, Naugachhia, Bhagalpur, Bihar.
5. The Block Development Officer, Naugachhia, Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amrit Kumar, Advocate. Mr. Kumar Shanu, Advocate.
For the State	:	SC-15.
For SEC	:	Mr. Girish Pandey, Advocate. Mr. Ravi Ranjan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-12-2023

Heard Mr. Amrit Kumar, learned counsel along
with Mr. Kumar Shanu, learned counsel appearing on behalf of
the petitioner; Mr. Girish Pandey, learned counsel along with
Mr. Ravi Ranjan, learned counsel for the State Election
Commission and learned SC-15 for the State.

2. The petitioner has filed the writ petition for the
following reliefs:

“Issuance of a direction, order, or writ, including writ in the
nature of mandamus directing the State Election
Commission, Bihar to include the vacant post of Panchayat
Samiti, Gram panchayat – Tetri, Pradeshik Nirvachan
Keshtra Sankhya-09, District – Bhagalpur in Panchayat
Bye-Election-2023 which will be conducted in the State of



Bihar on 28.12.2023.”

3. It is admitted fact that one Subhash Ray, Panchayat Samiti member of Ward No.9 of Gram Panchayat – Tetri, Block – Naugachhiya, District – Bhagalpur had died on 25.10.2023. The authorities of the Panchayat gave information to the Block Panchayat Raj Officer and the Block Development Officer immediately after a day of death of Subhash Ray on 26.10.2023. Thereafter, the Block Panchayat Raj Officer, Naugachhiya immediately communicated the details of vacancy of one post of panchayat samiti member due to death of Subhash Roy and also with respect to Jagatpur Panchayat as well as Khabra Panchayat. A copy of the communication dated 26.10.2023 was also forwarded to the District Panchayat Raj Officer, Bhagalpur in compliance of the Memo No. 2484 dated 20.10.2023, a communication to all the concerned Panchayat by the District Panchayat Raj Officer, Bhagalpur seeking vacancy with respect to different post in different Panchayat of the District was to be communicated to his office in prescribed Form ‘1’.

4. Learned counsel appearing on behalf of the petitioner submitted that soon after the communication made by the District Panchayat Raj Officer, death took place on 25.10.2023 and communication was made by the Block



Panchayat Raj Officer, Naugachhiya in compliance of Memo No. 2484 dated 20.10.2023 of the District Panchayat Raj Officer. The same was required to be forwarded to the State Election Officer through the District Election Officer. As per the provision of Bihar Panchayat Raj Act, 2006, a vacancy can arise due to disqualification of a member or on account of seat becoming vacant due to death, resignation or any other reason which cause for fresh election in accordance with Section 144 of the Act. The manner of holding of election with respect to casual vacancy has been prescribed in Rule 121. For holding an election, preparation are to be made by gathering information with respect to name of the constituency, territorial constituency, total population, population of scheduled castes, population of scheduled tribes and extent of constituency, territorial constituency, such information is required to be sent by the District Magistrate. Petitioner has brought on record a communication made by the State Election Authority contained in Memo No. 3654 dated 18.10.2023 by which information has been sought from different District with respect to the constituencies in which vacancy has arisen due to death, resignation or on account of disqualification as enumerated under Section 136(1) of the Act. The information were required



to be sent by 27.10.2023 with respect to vacancy arising out of death or if any post has become vacant due to any of the above reasons.

5. Learned counsel appearing on behalf of the petitioner further submitted that in spite of the admitted fact that on 25.10.2023, one Panchayat Samiti member of Tetri Panchayat namely Subhash Roy died on 25.10.2023 and the Block Development Officer and the Block Panchayat Raj Officer in compliance of the Memo No. 2484 dated 20.10.2023 had sent the details of the vacancy which has arisen in different Panchayat to the concerned authority. The election was announced on 04.12.2023 and nominations are required to be filed by 15.12.2023 starting from 09.12.2023 and the election has to be finally concluded on 30.12.2023. Even though the State Election Commission was informed about the vacancy which has arisen in Tetri Panchayat with respect to Ward No.9 before announcement of the election, there is no reason to not to hold election for the post which has become vacant due to death of one Panchayat Samiti member. On these background, learned counsel submits that a direction be issued to the Station Election Commission for holding election, with respect to vacancy of Panchayat Samiti member of Tetri Panchayat along with the



election which has been announced on 04.12.2023.

6. *Per contra*, learned counsel appearing on behalf of the State Election Commission submits that lot of preparation is required before holding election as it would appear from Memo No. 3654 dated 18.10.2023 communicated by the State Election Commission to all the District Magistrates cum District Election Officer (Panchayat), Bihar for holding election for the post which has become vacant due to death, resignation or on account of disqualification of a member in terms of Section 136 of the Bihar Panchayat Raj Act. It is not possible, at this stage, to hold election for two or three Panchayat as already authorities have proceeded to hold election as per the information which was given till 27.10.2023.

7. At this stage, learned counsel appearing on behalf of the petitioner informs that on the basis of the information which was given by the Block Panchayat Raj Officer contained in Memo No.197 dated 26.10.2023 to the District Panchayat Raj Officer, Bhagalpur, the State Election Commission has proceeded to hold election with respect to Jagatpur and Khabra Panchayat where also vacancy has arisen, but they have refused to hold election with respect to the petitioner's Panchayat.



8. Having considered the rival submissions made on behalf of the parties as well as the admitted fact enumerated in above paragraph of this order, I direct the Station Election Commission to verify the records and in case requisite data with respect to Tetri Gram Panchayat is available, they may proceed to hold election with respect to said Panchayat considering the fact that lot of public money is invested for holding election and again renotifying fresh election for a particular post of Panchayat will again require huge fund or in alternative he may take steps to hold election in accordance with law.

9. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	14.12.2023
Transmission Date	N.A.

