

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.893 of 2024
In
Civil Writ Jurisdiction Case No.6531 of 2024

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Sushma Devi, Wife of Madhusudan Tiwary, Resident of Village Barahshankar
P.S.- Patahi, District-East Champaran-845457.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate Cum District Election Officer, East Champaran.
3. The Circle Officer Cum Assistant Returning Officer, Patahi Block, East Champaran.
4. Mrs. Ranjana Singh W/o Ravi Shankar Singh Resident of Sakin Mauja-Bara Shankar, Thana-Patahi, District-East Champaran.
5. Mrs Divvya Kumari D/o Vinod Singh Resident of Sakin Mauja-Bara Shankar, Thana-Patahi, District-East Champaran.
6. Mrs Vimla Devi W/o Vinod Singh Resident of Sakin Mauja-Bara Shankar, Thana-Patahi, District-East Champaran.
7. Gulshan Ara W/o Nurul Hoda Mauja-Bara Shankar, Tola Mohhamadpur, Thana-Patahi, District-East Champaran.
8. Sunaina Devi W/o Lalbabu Singh Mauja-Bara Shankar, Chakriwal, Thana-Patahi, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Abhinav Alok, Advocate Ms. Priyajett Pandey, Advocate Ms. Megha, Advocate Mr. Kaustubh Kumar, Advocate
For the Respondent/s	:	Mr. Ajay GA-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-10-2024

The appeal arises from a judgment in a writ petition,
which challenged the order of the Election Tribunal constituted



under Section 137 of the Bihar Panchayat Raj Act, 2006 (for brevity the 'Act').

2. The challenge before the Tribunal was on the ground that the returned candidate was so returned for reason only of the votes polled in a booth, being replicated in another booth. That other booth, in fact, had more number of votes polled, which would have definitely resulted in the election petitioner being declared as the returned candidate. The Tribunal found favour with the contentions and directed counting of the votes polled in that other booth and also directed the candidate having majority votes to be declared as the returned candidate; which resulted in the election petitioner being so declared.

3. The learned Single Judge affirmed the order of the Election Tribunal, against which the present appeal is filed by the appellant who was the returned candidate, who lost in the election petition.

4. The issue is in a short compass and the learned Counsel for the petitioner, Shri Abhinav Alok specifically took us to Rule 112 of the Bihar Panchayat Election Rules, 2006 (for brevity, 2006 Rules') and claimed for directing a re-election, as per Rule 112 (1) of the 2006 Rules.

5. Shri Ajay, learned Government Advocate, sought to



uphold the order of the learned Single Judge.

6. Rule 112 of the 2006 Rules provides for two contingencies; as per sub-rule(1), if the elected person is found to be guilty of misconduct under the provisions of Sections 139 and 141 of the Act, then the election could be declared void and a re-election could be ordered. Insofar as sub-rule (2) is concerned, it empowers, *inter alia*, the Tribunal; under the provisions of Section 140 of the Act, to declare another candidate as elected, which second relief was allowed by the Election Tribunal in this case.

7. Sub-rule(1) is specific with respect to a misconduct of the elected person; which also contemplates that such person would have obtained the maximum votes. In the present case, it was the specific contention in the election petition that the votes polled in one booth was not properly reckoned and that if the votes actually polled in that booth were taken into account, the election petitioner would have been elected; having received the maximum votes.

8. Having looked at the order of the learned Single Judge, we find the learned Single Judge having extracted the tabulation of the votes polled in each of the booths. We see from the tabulation in Para-8 of the impugned judgment that the votes



polled as against each candidate in Booth Nos. 92 and 79, was identical. The contention was also that the votes polled in Booth No. 92 was replicated in Booth No. 79 and those votes actually polled in Booth No. 79 were not reckoned. The tabulation of the votes polled as against each candidate in Booth No. 79 is also extracted in Para-9. A mere arithmetical counting would indicate that the election petitioner, Ranjana Singh, was the candidate who obtained the maximum votes, who is impleaded as the 4th Respondent in the writ petition.

9. The declaration of the writ petitioner as the returned candidate was obviously by reason of a mistake occurred in counting the votes of one booth, as having polled in one another booth also.

10. We have already held that sub-rule(1) of Rule 112 of the 2006 Rules does not apply in the facts of the case. Sub-rule (2) of Rule 112 specifically speaks of Section 140, which contemplates the situation of the election petitioner or some other candidate having received a majority of the valid votes in which event, the Election Tribunal is clothed with the power to declare the candidate who received the majority of the valid votes to be duly elected. This is precisely the exercise that has been carried out by the Election Tribunal, which is in



consonance with the Act and the Rules.

11. We find absolutely no reason to interfere with the judgment of the learned Single Judge.

12. The appeal stands dismissed *in limine*.

13. Interlocutory application, if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

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