

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15109 of 2023

Sandhya Devi Wife of Sri Ajay Kumar Singh, Resident of Village and Post Office- Chapar, Gram Panchayat Raj- Harail, Police Station- Mohiuddin Nagar, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the District Magistrate cum District Election Officer (Panchayat) Samastipur, District- Samastipur.
2. The Returning Officer (Panchayat Election) 2021-cum-Block Development Officer, Mohiuddin Nagar, P.S.- Mohiuddin Nagar, District- Samastipur.
3. Happy Nitu Singh @ Nitu Singh Wife of Dharmendra Kumar @ Dharmendra Kumar Singh, Resident of Village and Post Office- Chapar, Gram Panchayat Raj- Harail, Police Station- Mohiuddin Nagar, District- Samastipur.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. S.B.K. Mangalam, Advocate
For Private Res. No. 3	:	Mr. Ashok Kumar Singh, Advocate
		Mr. Parmeshwar Vishwakarma, Advocate
For the State	:	Mr. Prem Ranjan Raj, AC to SC-7

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 25-06-2024

Heard Mr. S.B.K. Mangalam, the learned counsel for the petitioner, Mr. Ashok Kumar Singh, the learned counsel for the private respondent no. 3, assisted by Mr. Parmeshwar Vishwakarma, the learned Advocate and Mr. Prem Ranjan Raj, the learned AC to SC-7 for the State.

2. The present writ petition has been filed for quashing the judgment and order dated 19.08.2023 passed by the learned Munsif, Shahpur Patori, District - Samastipur in Election Petition No. 02 of 2022 (Annexure- P-9), whereby the



learned Munsif has been pleased to dismiss the Election Petition filed by the petitioner, challenging the election of Respondent No. 3, who was elected as the Mukhiya of Gram Panchayat Raj-Harail under Mohiuddin Nagar Block of Samastipur District on the ground that even though she was not a voter in the voter list of Gram Panchayat, however, she impersonated herself as Happy Nitu Singh and contested the election and won it and according to the petitioner, the election of Respondent No. 3 is fit to be declared void under Section 139(1)(a) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act).

3. Learned counsel for the petitioner submits that the State Election Commission has decided to conduct the Panchayat Election 2021 and State Election Commission had issued notification in accordance with law and as per the schedule of election notified by the State Election Commission, the election in the petitioner's Gram Panchayat was conducted according to the following schedule:

Last date for filing of nomination paper :	24.11.2021
Date for Scrutiny of nomination paper :	27.11.2021
Date for withdrawal of candidature :	29.11.2021
Date of Poll :	12.12.2021
Date of counting :	14.12.2021
Date of election of result :	14.12.2021



Altogether, eleven candidates had filed their nomination to contest for the post of Mukhiya of the said Gram Panchayat, including the petitioner and Respondent No. 3.

4. Learned counsel for the petitioner submits that the Respondent No. 3 had filed her nomination in the name of Happy Nitu Singh wife of Dharmendra Kumar and according to declaration made by her in her bio-data, she claimed her name to be appearing at serial no. 536 of the Panchayat Voter List of Harail Gram Panchayat pertaining to Territorial Constituency No. 5.

5. Learned counsel for the petitioner submits that on 26.11.2021, the petitioner had filed an objection before the Returning Officer to reject the nomination of Respondent No. 3 on the ground that there is no voter in the name of Happy Nitu Singh in the voter list of Gram Panchayat Raj, Harail and the nomination filed by the Respondent No. 3 cannot be accepted. But, the Returning Officer has not taken cognizance of the objection filed by the petitioner and Returning Officer has allowed the Respondent No. 3 to contest the election.

6. Learned counsel for the petitioner submits that the petitioner had no other remedy under the law to challenge the illegality committed by the Returning Officer at the time of the



scrutiny of nomination paper and he had no other option but to wait until the election is concluded and the result of the election is declared by the Returning Officer. The result of the election was declared by the Returning Officer on 14.12.2021 and the Respondent No. 3 was declared elected by a margin of 354 votes.

7. The election of Respondent No. 3 was challenged by the petitioner before the learned Munsif, Shahpur Patori by filing a duly constituted election petition under Section 137 of the Gram Panchayat Act, on the ground that in view of the provisions contained under Section 135 of the Gram Panchayat Act, since the name of the Respondent No. 3 was not there in the voter list of any Gram Panchayat, therefore, she was disqualified to contest the election and since she had contested and won the election, her election is fit to be declared void under Section 139(1)(a) of the Gram Panchayat Act.

8. The election petition filed by the petitioner was admitted and notices were issued to the Respondents and after service of notice, the Respondent No. 3 appeared and filed her written statement on 08.05.2023.

9. Learned counsel for the petitioner submits that on the basis of the pleadings of the parties, following issues were



framed by the learned Munsif, Shahpur Patori for determination of the election petition no. 2 of 2022:

(i) Whether the present election petition is maintainable?

(ii) Whether the petitioner has valid cause of action and right to sue?

(iii) Whether the suit is barred by law of limitation, waiver, estoppel and acquiescence?

(iv) Whether the nomination filed by the Respondent No. 3 in violation of Rule 39(h) of the Bihar Gram Panchayat Rules and the same is liable to be cancelled?

(v) Whether the nomination filed by the Respondent No. 3 was properly scrutinized by the Returning Officer?

(vi) Whether the suit suffers from the defect of parties?

(vii) Whether petitioner is entitled to be declared as Mukhiya?

(viii) Whether the petitioner is entitled for any other relief or reliefs, if so, up to what extent?

10. During the course of the trial of the election petition, number of oral and documentary evidences were



produced on behalf of the parties. Issue Nos. 4, 5 and 7 which includes the improper acceptance of nomination of Respondent No. 3 was decided by learned Munsif against the petitioner on totally misconceived and untenable reason and which is against the provision contained under Section 135 of the Gram Panchayat Act for the purpose of deciding issue nos. 4, 5 and 7 against the petitioner.

11. The learned Munsif had heavily relied upon the evidence of the Returning Officer namely, Om Prakash, who was examined as RN1W1.

12. Learned counsel for the Respondent No. 1 as well as Respondent No. 3 have filed their respective counter-affidavits. Respondent No. 1 has stated in his counter-affidavit that it is undisputed fact that Nitu Singh and Happy Nitu Singh is one and same person and her husband's name is Dharmendra Kumar @ Dharmendra Kumar Singh and whatever allegation as pleaded against her in the petition is completely false.

13. Learned counsel for the Respondent No. 3 submits that Respondent No. 3 had submitted an affidavit along with her nomination paper stating therein that her name has been recorded as Nitu Singh in the *Panchayat Nirvachan Namawali*, whereas her name has been recorded as Happy Nitu Singh in the



voter Id Card and in her Aadhar Card and she had also declared that above mentioned both the names are her own name and for this, she has also submitted an affidavit and on the aforesaid ground, the nomination paper of Respondent No. 3 was accepted by the competent authority. The Returning Officer-cum- B.D.O., Mohiuddin Nagar again checked the nomination paper along with documents of the Respondent No. 3 after receiving objection from the petitioner on 26.11.2021, in accordance with law and found that both the names are of the same person as well as photo printed on voter Id card, Aadhar card and voters list are identical and the Respondent No. 3 had also filed an affidavit, in which she has stated that she is known by both names and after examining the entire documents filed by the Respondent No. 3, the Returning Officer came to the conclusion that nomination paper of Respondent No. 3 is in accordance with law.

14. Learned counsel for the Respondent No. 3 further submits that petitioner challenged the election of Respondent No. 3 before the learned Munsif, Shahpur Patori, Samastipur in election petition no. 02 of 2022, in which an ex-parte order was passed and had seized the power of the Respondent No. 3 as Mukhiya vide order dated 25.04.2022 and the application filed



for recalling the order dated 25.04.2022 was rejected vide order dated 26.08.2022. The Respondent No. 3 had challenged the ex-party order dated 25.04.2022 and 26.08.2022 passed by the learned Munsif, Shahpur Patori in election petition no. 02 of 2022 in CWJC No. 15037 of 2022. The writ petition of the Respondent No. 3 was allowed vide order dated 01.05.2023. The Hon'ble Court has been pleased to set aside the order dated 25.04.2022 and 26.08.2022 as passed in election petition no. 02 of 2022 and further directed the learned trial Court to conclude the election petition no. 02 of 2022, expeditiously, preferably within a period of three months from the date of receipt / production of a copy of this order.

15. Learned counsel for the Respondent No. 3 further submits that in obedience to the order passed in CWJC No. 15037 of 2022, the learned Munsif, Shahpur Patori has been pleased to reject the election petition of the petitioner in accordance with law and the finding based on appreciation of evidence and the election of the Respondent No. 3 cannot be set aside as void merely on assumption and presumption, rather its void character should be clear as crystal.

16. Learned counsel for the Respondent No. 3 has relied upon the judgment reported in *AIR 1954 SC 210* in the



case of ***Jagan Nath v. Jaswant Singh & Ors.***, while dealing with the propriety of the decision of the election tribunal has been succinctly held that:

“the general rule is well settled that the statutory requirements of election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is sound principal of natural justice that the success of a candidate who has won at an election should not be lightly interfered with any petition seeking such interference must strictly confirm to the requirement of the law. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safe guard the purity of the election process and also to see that the people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequences, or does not lay down penalty for non-compliance with certain procedural requirement of that law, the juristic of the tribunal entrusted with the trial of the case is not effected.”

17. Having considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties, this Court is of the view that the learned election tribunal has rightly passed the order dated 19.08.2023 in election petition no. 02 of 2022, in accordance with law, on the basis of the evidence produced before the tribunal and he has



rightly dismissed the election petition of the petitioner on the ground that Nitu Singh and Happy Nitu Singh wife of Dharmendra Kumar @ Dharmendra Kumar Singh is one and same person and in support, Respondent No. 3 has filed a copy of Aadhar Card, a copy of Voter Id Card as well as an affidavit, which suggests that Happy Nitu Singh and Nitu Singh is one and same person and her husband’s name is Dharmendra Kumar @ Dharmendra Kumar Singh and all the allegations levelled against the Respondent No. 3 are false.

18. Accordingly, there is no merit in the writ petition and the writ petition stands dismissed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	NA
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