

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15168 of 2023

Manju Devi wife of Satyendra singh Resident of village- Panjari P.O. Basudeo Dehri, P.S. Dinara , District - Rohtas at Sasaram, presently residing at 102, Shyam Kutir, Sidharth Nagar, Jagdeo Path, Near Haldi Ram Factory, Rukunpura, Patna, P.O. Bihar Veterinary College, P.S. Rupaspur District -Patna.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The District Election Officer (Panchayat)-cum-District Magistrate, Rohtas, District - Rohtas at Sasaram.
3. The Returning Officer -cum-Block Development Officer, Dinara, District - Rohtas at Sasaram.
4. Ekata Devi wife of Upendra Kumar Singh, Resident of village and P.O. Arthu, P.S. Dinara, District - Rohtas at Sasaram.
5. Asha Devi wife of Brameshwar Singh, Resident of village- Madhukarpur, P.O. Basudeo Dehri, P.S. Dinara, District - Rohtas at Sasaram.
6. Indu Devi wife Birbal Chaudhary, Resident of village- Bharsara, P.O. Basudeo Dehri, P.S. Dinara District - Rohtas at Sasaram.
7. Chunnu Devi wife of Murari Chaudhary, Resident of village and P.O. Basudeo Dehri, P.S. Dinara, District - Rohtas at Sasaram.
8. Babita Kumari wife of Ravi Ranjan Kumar, Resident of village and P.O. Basudeo Dehri, P.S. Dinara, District-Rohtas at Sasaram.
9. Bhagwati Devi wife of Lal Babu Chaudhary, Resident of village and P.O. Basudeo Dehri, P.S. Dinara, District-Rohtas at Sasaram.
10. Ritu Devi wife of Jai Prakash Bharti, Resident of village and P.O. Bharsara, P.S. Dinara, District - Rohtas at Sasaram.
11. Ruby Devi wife of Dipu Kumar Singh, Resident of village and P.O. Arthu, P.S. Dinara, District - Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.S.B.K. Mangalam, Advocate Mr. Awnish Kumar, Advocate
For the State	:	Mr. Kumar Alok, SC-7
For SEC	:	Mr. Ravi Ranjan, Advocate Mr. Girish Pandey, Advocate
For the Respondent no.4 :		Mr. Sanjay Singh, Sr. Advocate Mr. Sanjay Kumar, Advocate Mr. Surendra Kumar Choubey, Advocate



CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT

Date : 20-08-2024

Heard the parties.

(A) PRAYER:

2. The writ petition has been preferred for the following reliefs:

(i) for issuance of an appropriate writ in the nature of CERTIORARI for quashing the judgment and order dated 29.08.2023 passed by the learned Election Tribunal-cum- Civil Judge Junior Division, Bikramganj, District - Rohtas at Sasaram in Election Petition No.05 of 2021, whereby and where under the learned Civil Judge, Junior Division, Bikramganj has been pleased not only to set aside the election of writ petitioner as duly elected Mukhiya of Gram Panchayat Raj,



Bharsara under Dinara Block of Rohtas District but had also been pleased to declare the election petitioner, the Respondent no.4 as the duly elected candidate for the post of Mukhiya of said Gram Panchayat;

(ii) for a declaration that in view of the provisions contained under Section -140(1)(a) & (b) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act), an election petitioner can be declared to have been elected by the prescribed authority but only after recording a finding that in fact it is the election petitioner had received majority of valid votes in the said election whether on account of corrupt practices or for any reason whatsoever and to that



extent the impugned judgment when it declare the election petitioner as the duly elected candidate for the post of Mukhiya of Gram Panchayat Raj, Bharsara is without jurisdiction and based on no evidence;

(iii) 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.

(B) PETITIONER'S CASE:

3. The matter relates to the Gram Panchayat Raj Bharsara under Dinara Block in the district Rohtas where pursuant to the announcement of the **2021 Panchayat election** by the **State Election Commission, Bihar** (henceforth for short 'the Commission'), the petitioner and the Respondent nos. 4 to 11 contested the election whereafter the petitioner was declared elected as 'Mukhiya'.

4. The respondent no.4 thereafter preferred



Election Petition no. 05 of 2021 before the Election Tribunal calling in question the election of the petitioner on the ground that in her affidavit attached with the nomination paper, she suppressed /did not disclosed many material informations as mandated under **Section 125A** of the **Bihar Panchayat Raj Act, 2005** (henceforth for short 'the Act').

5. On 01.02.2022, the said election petition was admitted for hearing and direction was given for the issuance of notice upon the Respondents through the ordinary process. The case of the petitioner is that even before the return of process of notices issued to the Respondents in compliance of the order dated 01.02.2022; on 08.03.2022, when the matter was again taken up by Court, it was pleased to issue direction for taking steps for service of notices against the Respondents through the registered post despite no clarification on the service report of the earlier notice dated 01.02.2022.

6. The matter was next fixed for 18.04.2022 when again without having any information about the registered notice dated 08.03.2022, direction was issued to take steps for the substituted mode of service through Newspaper publication fixing the matter for 28.04.2022 and



thereafter for 10.05.2022.

7. On 10.05.2022, when the case was taken up, it was adjourned for 20.08.2022 on which date, an order was passed for an ex-parte hearing against the Respondent nos. 1 to 7.

8. The claim of the petitioner is that the order-sheet nowhere shows service of notices upon the respondents. Despite that, an order was passed for an ex parte hearing.

9. The petitioner further claims that she never came to know about the hearing of the election petition against her and if any written statement on her behalf was filed in the court, it is a fraud played by someone to show that the petitioner had appeared in the case and had filed her written statement.

10. It is further case of the petitioner since she had no knowledge about the filing of instant election petition by the Respondent no.4 nor any notice of the election petition was ever served upon her by any mode, she could not file her written statement as recorded in the order dated 02.06.2022.

11. The second contention put forward by the petitioner is that the Court did not framed the issues which was a necessity and in that background, the election petition



so conducted was not in accordance with law.

12. The third contention is that after hearing the election petition ex-parte, the learned Court vide impugned judgment and order dated 29.08.2023 was not only pleased to declare the election of the writ petitioner void, it also declared the Respondent no.4 as the duly elected 'Mukhiya' of the said Gram Panchayat which could not have been done.

13. The case is that a perusal of the pleadings of the election petition would show that the Respondent no.4 tried to make out a case of improper acceptance of the nomination paper by the Returning Officer on the ground that in her affidavit filed along with nomination paper, she concealed material information about herself, her spouse and dependants which attracts the provisions contained under **Section 139(1)(d)(iv) of the Bihar Panchayat Raj Act** (henceforth for short 'the Act') read with the provisions contained under **Article 19(1) (a) of the Constitution of India.**

14. **Section 139 of 'the Act'** contemplates the grounds on which the election of a successful candidate can be set aside while **Section -140** defines the grounds on which a candidate other than the returned candidate may be declared



to have been elected.

15. This Court would like to incorporate the relevant both **sections 139 and 140 of 'the Act'** which read as follows:

Section 139- Grounds for declaring election to be void (1)

Subject to the provisions of sub-section (2) if the prescribed authority is of opinion

(a) that on the date of his election, a returned candidate was not qualified or was disqualified to be chosen as a member under this Act: or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, in



so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance of any nomination ;or

(ii) by any corrupt practice committed in the interest of the returned candidate by any agent; or

(iii) by the improper reception, refusal or rejection of any voter or reception of any vote which is void; or

(iv) by any non-compliance with the provisions of this Act or of any rules or orders made there under, the prescribed authority shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Prescribed Authority, any agent of a returned candidate has been guilty of any corrupt practice but the prescribed authority is satisfied

(a) that no such corrupt practice



was committed at the election by the candidate and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;

(b) that the candidate took all reasonable measures for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent, then the Prescribed Authority may decide that the election of the returned candidate is not void.

16. Further, **section 140 of 'the Act'** read as follows:-

Section 140-Grounds on which a candidate other than the returned candidate may be declared to have been elected -



(1) If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claims a declaration that he himself or any other candidate has been duly elected and the Prescribed Authority is of opinion -

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Prescribed Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

(2) The decision of the Prescribed Authority shall be final.

17. The case of the petitioner is that in line with



the Section 139(1) (d) of 'the Act', the election of a returned candidate can be declared void by the prescribed authority only when there is adequate statement of material facts in the election petition supported by the evidence that because of improper acceptance of a nomination paper, the result of election was materially affected and not otherwise.

18. Further, the election petitioner has neither pleaded that because of improper acceptance of petitioner's nomination, her candidature was materially affected nor she produced any evidence in this regard.

19. The claim is that while declaring the election of the writ petitioner void, the Court exceeded its jurisdiction under 'the Act' by declaring the election petitioner, the Respondent no.4 as the duly elected 'Mukhiya' of the Panchayat in question.

20. Learned counsel for the petitioner submits that in the absence of any finding by the learned Court that the election petitioner, (the respondent no.4) had received the majority of valid votes in the impugned election, it was not within the Court's jurisdiction to declare her as the duly elected 'Mukhiya' of the Panchayat in question.

21. In support of the petitioner's case, the learned



counsel cited an order of the Hon'ble Supreme Court in the case of *Union of India vs. Association for Democratic Reforms and Anr* reported in (2002) 5 SCC 295 where in para-48 it was held:-

“48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of my criminal offence in the past --- if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for



two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependents.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.”

22. Learned counsel for the petitioner next cited the judgment of the Hon’ble Supreme Court in the case of ***Mangani Lal Mandal vs. Bishnu Deo Bhandari*** reported in **(2012) 3 SCC 314** where paras 11 and 12 read as follows:-

“11. A mere non-compliance or breach of the Constitution or the statutory provision noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void



on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d) (iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal; (2) LR. Shivaramagowda v. T.M. Chandrashekar; and (3) Uma Ballav Rath



v. Maheshwar Mohanty.

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any



evidence let in by the election petitioner.

*The High Court has also not formed my
opinion on this aspect.”*

23. The third case cited by the learned counsel for the petitioner is the judgment of the Hon'ble Supreme Court in the case of ***Jyoti Basu vs. Devi Ghosal*** reported in ***AIR 1982 SC 983*** and para-8 of the aforesaid judgment read as follows:

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law election nor the principles of equity apply but only those rules which the statute makes shall and applies. It is a



special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election s disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon other a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be



questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute, We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act?

[Section 125 -A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,

(i) fails to furnish information relating to sub-section (1) of Section 33-A; or

(ii) gives false information which he



knows or has reason to believe to be false;

or

(iii) conceals any information,

In his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”

24. Learned counsel further cited an order of the Hon’ble Supreme Court in the case of ***Kanimozhi Karunanidhi vs. A. Santhana Kumar & Ors.*** passed in ***Civil Appeal No.3411-12 of 2023*** and para 56 read as follows:-

56. *“In Sudarsha Avasthi v. Shiv Pal Singh [MANU/SC/7746/2008: (2008) 7 SCC 604] this Court observed as under:*

20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a



*person who uses this as a handle for
vexatious purpose.”*

25. Learned counsel for the petitioner concludes his case by submitting that the writ petition thus is fit to be allowed setting aside the order dated 29.08.2023 passed by the learned Civil Judge, Junior Division, Bikramganj in Election Petition No. 05 of 2021.

(C) Case of the respondent no.4

26. The case of the respondent no.4 as put forward by Mr. Sanjay Singh, learned Senior Counsel is that the answering respondent was a candidate for the post of ‘Mukhiya’ of Gram Panchayat Raj Bharasara under Dinara Block, in the district of Rohtas. Further, in the Gram Panchayat general election held in the year 2021, beside the writ petitioner Manju Devi, the respondent Nos. 5 to 11 were also contesting and the petitioner was declared elected following the election so held.

27. Further, as per the election result, while the petitioner secured 1472 valid votes, the answering respondent got 1426 valid votes and thus she was the second last candidate in terms of valid votes received and the margin of victory/defeat was only 46 votes.



28. Her case is that the while filing of the nomination paper, the petitioner had committed glaring illegalities, still the same was cleared and as the election process could not have been stalled midway, once it was over with the declaration of result, the answering respondent promptly filed an election petition vide **Election Petition no.05/2021** under **Section 137 of 'the Act'** before the court of learned Munsif cum Election Tribunal, Bikramganj, Rohtas for declaring the election of the petitioner herein as void and further to declare her as the elected 'Mukhiya'.

29. The contention is that aforesaid election case filed by the answering respondent was admitted and notice through ordinary process was issued to the opposite parties by an order dated 01.02.2022. So far as the writ petitioner, Manju Devi is concerned, service report with regard to summon returned with the note that she was not found in the house and therefore it was hanged on the door of her house on 21.02.2022.

30. The submission is that after the receipt of report, on the next date i.e. on 08.03.2022, an order was passed by the learned Court for the issuance of registered notice to opposite parties. Again, with regard to service of



registered notice returned with the report that the petitioner herein refused to receive the same. Learned counsel submits that in that background, the learned court vide an order dated 18.04.2022 gave direction for taking steps for the Newspaper publication. Pursuant thereto and in compliance of order dated 18.04.2022, the notice was published in prominent newspapers including the local daily **Hindi** Newspaper namely "**Hindustan**" on **21.04.2022**.

31. The contention is that the petitioner herein despite the valid service of notice and having full knowledge of it deliberately avoided it and chose not to put in her appearance. Before publication of notice in the Newspaper (Annexure-R/4), she had refused to receive the registered notice which is apparent from the report available on record of the case.

32. Learned counsel submits that the petitioner has not made any submission as to why she remained absent even after the Newspaper publication and/or whether she had the knowledge about the notice published in the Newspaper or not. Thus, considering her conduct, all contentions put forward by the petitioner about no knowledge of the election petition be rejected out-rightly as it is only to hoodwink the



Court.

33. The contention is that the petitioner only wanted to delay the proceeding and as despite exhausting all processes, since she chose not to appear in the case, the Court rightly proceeded ex-parte against her after passing an order to this effect.

34. The case of the petitioner further is that by an order dated 30.09.2022, issues were framed by the Court in the case whereafter it proceeded in a very fair and legal manner. The parties who appeared and participated in the proceeding adduced their oral and documentary evidence. One Sanjay Kumar Das appeared as a witness on behalf of opposite party No.11, the Returning Officer cum B.D.O, Dinara, Rohtas.

35. The further case is that after adducing evidence and hearing the parties, the learned Court passed the final judgement and order dated 29.08.2023 in Election Petition No.05 of 2021 whereby and where under the election of the petitioner, Manju Devi was declared void and Ekta Devi(answering respondent herein) was declared winning candidate of Panchayat Bharasara as she was the second best candidate on the basis of votes polled.



36. The submission is that the respondent no.4 had come forward with several facts and challenged the election of the petitioner herein on many grounds such as improper acceptance of nomination paper, corrupt practice etc. as also the non- furnishing of certain information essential for the candidates which materially affected the election. It was thus clear violation of Section 125A of 'the Act' as the petitioner was required to fill each and every column of the nomination paper has to be filled by candidate.

37. However, the petitioner deliberately skipped the column, rather it concealed required mandatory information in her nomination paper such as details of movable property, cash in hand, bank balance of husband and spouses, shares, bonds, fixed deposits, vehicles and ornaments, loans from banks and financial institution, educational qualification etc. The non-disclosure of assets, liabilities, education qualification and other required mandatory information is/are apparent from a bare perusal of her nomination paper and thus was in complete violation of **section 125A** of 'the Act'. This materially affected the election as also the candidature of the answering respondent



as the victory margin was less.

38. The submission of the learned Senior Counsel is that the Election Tribunal in its judgment and order dated 29.08.2023 has elaborately dealt with the facts and evidence of the case as also the law related to non-furnishing of required mandatory information, its result and it being in the category of improper acceptance of nomination paper. The learned court thus rightly held that failing to submit necessary information in the nomination paper nullifies her election.

39. Learned Senior Counsel submits that the format in the nomination paper has been envisaged as per the guidelines only to ensure that the voter has complete knowledge of a candidate so that he/she can exercise his/her valuable vote in favour of a candidate. If the nomination of returned candidate suffers from non-disclosure of mandatory information and has been improperly accepted, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his/her nomination was not accepted. He submits that there has been complete non-compliance of the provision of 'the Act', rules and orders made thereunder and in that circumstances, the election of the petitioner herein



has rightly been declared void in accordance with section 139 of 'the Act'.

40. Learned Senior Counsel further submits that once the election of the petitioner was declared nullified, the answering respondent being the next candidate who secured second maximum votes, the learned Tribunal has rightly declared her as the winning candidate and decided the issue in her favour in accordance with section 140 of 'the Act'.

41. He reiterates that once the acceptance of nomination of returned candidate has been held void *abinitio*, second candidate, the respondent no.4, who secured second maximum votes was rightly declared elected.

42. Learned Senior Counsel for the respondent no.4 cited the case of Patna High Court judgment relating to the case of **Santosh Kumar Singh vs the State of Bihar** reported 2018 (2) PLJR. Para 38 read as follows:-

“38. In the result and for the foregoing reasons, we, while upholding the order of the learned Tribunal, declaring the election of the appellant herein, as void, hereby set aside and quash the direction, which has been given by the order, dated



12.6.2015, passed by the learned Tribunal that, "the State Election Commission, Patna, and the District Election Officer, Bhojpur, Ara, are directed to declare the next candidate who has got majority of valid votes now, as Mukhiya of Gram Panchayat, Khajuria of Ara Block, District- Bhojpur, so that the expenditure of public money and time could be saved and justice could be done", and direct the learned Tribunal to pass necessary order, in accordance with law, in the light of what has been pointed out above."

43. Learned Senior Counsel concludes by submitting that in the entire writ petition, she has neither made any averment nor annexed any document or made submission whatsoever asserting that her nomination paper related to election was not in violation of section 125A(i) of 'the Act' or that she had not violated the mandatory provision of 'Act' or relevant 'rule'. Further, the writ petitioner has nowhere defended that her nomination was properly and legally accepted and that she had furnished mandatory informations.



The submission is that the writ petitioner has deliberately avoided such assertions and submissions. She has only tried to hoodwink the Court on the ground that she was not properly noticed. He asserts that mere non-inclusion of a line that it materially affected the election cannot be a reason/ground to interfere in the reasoned order. The entire facts on record clearly show that the non-disclosure materially affected the election. He thus submits that the writ petition deserves dismissal.

44. Having heard the parties and going through the record as also the order in question that emerges is/are:

(i) whether the Court exhausted all options of appearance of the writ petitioner herein before passing the order to hear the matter ex-parte;

(ii) whether the Court framed the issues in the petition;

(iii) whether the non-disclosure of necessary information materially affected the candidature of the election petitioner;

(iv) whether the election petitioner made



*out her case warranting interference by
the Election Tribunal;*

*(v) whether after declaring of the
election of the petitioner as void, the
Election Tribunal was justified in
declaring the election of the petitioner
(respondent no.4) as the elected
'Mukhiya';*

45. Taking up the first issue, the un-refuted statement of respondent no.4- election petitioner on affidavit specially in paragraphs 9, 10 and 12 is/are that:

(i) earlier the notices were issued on 01.02.2022, to the petitioner amongst other which was hanged on the door of her house after she was not found in the house;

(ii) accordingly, the Court passed an order for the issuance of registered cover notice on 08.03.2022 which the petitioner refused to accept;

(iii) in the aforesaid circumstances, an order was passed for the



Newspaper publication on
18.04.2022;

(iv) the notice was accordingly
published in the Hindi “Hindustan”
on 21.04.2022;

(v) no where in the writ petition nor
in the submission, the petitioner
made any statement whether she had
the knowledge of newspaper
publication and/or not and whether
she could have appeared and
contested the case or not pursuant to
the notice published in the
Newspaper;

(vi) counter affidavit of the
respondent no.4 was served upon
learned counsel for the petitioner on
12.12.2023 but he chose not to file
any reply to the specific averments
made by the respondent no.4 in
paragraphs 9, 10 and 12.

46. This Court thus is convinced that the



Tribunal exhausted all options inasmuch as:

- (i) firstly, it issued notices on 01.02.2002. As the petitioner could not be found in the house, it was hanged on her house;
- (ii) it was in the aforesaid circumstances and upon report regarding it, an order was passed for the issuance of registered cover notice on 08.03.2022 to the opposite party including the petitioner;
- (iii) as per the report, the petitioner refused to accept the registered notice;
- (iv) accordingly, the Court passed an order on 18.04.2022 for Newspaper publication of the notice;
- (v) it was subsequently published amongst the other in Hindi 'Hindustan' on 21.04.2022;
- (vi) the petitioner has not made any submission on the point why she



chose not to appear even after the Newspaper publication and/or even after the Newspaper publication, she had absolutely no clue about this petition.

47. This court is thus convinced that the Court took all possible steps to ensure the presence of the petitioner and as he deliberately chose not to appear and contest the case, it was posted for an ex-parte hearing. The petitioner clearly wanted to delay the process of the proceeding and with the said intention in mind, she absented herself in the proceeding.

48. The petitioner though has tried to make out a case on the basis of ordersheet to show that it has not been clearly recorded that notices were served upon the respondents, she has not stated anything on whether the Newspaper publication was within her knowledge or not.

49. Further, the respondent no.4 claims that the registered cover notice was served upon the petitioner who refused to accept it. This has also not been refuted by the petitioner. In that background, the contention put forward by the petitioner that she had no knowledge about the filing of



the petition is rejected.

50. Though the petitioner further claims that if any written statement was filed on her behalf, it was fraud committed by someone, nothing is on record to show that what steps she took for initiating action against 'someone' who committed fraud against her. As such, the said contention is also rejected.

51. Regarding the second contention that issues were not framed before the Court proceeded in the matter, learned Senior Counsel took this Court to the order to show that the issues were framed in the following manner:-

(i) is the election petition maintainable ?

(ii) is election of petitioner Manju Devi be declared void ?

(iii) is election petitioner Ekta Devi has been declared as duly elected Mukhiya ?

52. In that background, this Court is satisfied that the Court framed the issues properly. The second contention of the petitioner is also rejected.

53. Regarding the third issue as to whether the non-disclosure of necessary information in the nomination form materially affected the candidature of the election



petitioner, the respondent no.4 produced documentary evidence as also adduced evidence to support her case that the petitioner deliberately suppressed many material facts while submitting nomination form and as such it should have been rejected at the time of scrutiny itself.

54. However, as the nomination paper was illegally accepted, she had no option but to wait till the election process was over whereafter the election petition was filed. The margin of victory and defeat was very small which clearly show that the non-filing of the details regarding her assets as also other financial liabilities/dues materially affected her case. Thus the third issue is also decided against the petitioner. This Court thus holds that the non-disclosure of information materially affected her candidature as the non-disclosure of vital information made the voters bereft of the actual knowledge of the background of the candidate (petitioner herein). It is to be noted that the respondent no.4 was close behind the petitioner in terms of votes and the gap between two of them was mere 46 votes.

55. In the aforesaid background, the Election Tribunal rightly held the acceptance of the nomination paper of the petitioner by the Returning Officer as *void ab*



initio. Thus, even the fourth issue is answered against the petitioner and it is held that the Election Tribunal was fully justified in passing the order having come to the conclusion that the election of the petitioner is *void ab initio*. Mere absence of any word here and there will not make a reasoned order null and void.

56. This takes us to the last question as to whether the Election Tribunal was justified in declaring the respondent no.4 as the winning candidate.

57. The admitted fact again is that while the petitioner was declared elected, the respondent no.4 was the next best candidate with more votes. As the non-disclosure of material information by the petitioner affected her candidature, once the election of the petitioner was held *void ab initio*, the Tribunal rightly held that the respondent no.4 to be the winning candidate.

58. The claim of the petitioner that this was not even asked for by the respondent no.4 is fit to be rejected as the election petition is on record (Annexure-P-1) and the relief sought for read as follows:

“It is, therefore prayed that your honour will be pleased to declare this



election of opposite party no.1 namely Manju Devi returned candidate to be void and further be pleased to declared this election petitioner as to have been duly elected 'Mukhiya' instead of opposite party no.1 returned candidate of Gram Panchayat Bharsara, under Block-Dinara, Rohtas with special cost.

59. Regarding the contention of the petitioner that while declaring her election as illegal/ void, the Court ought not have declared the respondent no.4 as the 'Mukhiya' of the said Gram Panchayat, learned Senior Counsel rightly pointed out that in terms of valid votes secured, she was the candidate with second maximum votes.

60. As such, once the election of the petitioner was declared illegal, the respondent no.4 was rightly declared winner. Learned Senior Counsel has further rightly pointed out that the petitioner has purposely avoided the question in the entire writ petition as to whether her nomination paper was in order as mandated in Section 125A of 'the Act'. If the answer is in negative, the Tribunal rightly held that it affected



the candidature of the respondent no.4. This Court further accepts the submission of learned Senior Counsel that mere absence of the sentence that it materially affected the election cannot be the basis to set aside the reasoned order when the facts have been elaborately detailed out in the order of the concerned Court.

61. Now coming to the cases cited by the petitioner. So far as the first case of **Union of India** (supra) cited by the petitioner is concerned, it is clear that the petitioner deliberately violated the same by not producing any details of the assets as also whether she owe dues to any financial institution. The Union of India (supra) case as such is against the petitioner herein and favours the election petitioner.

62. Regarding the second case of **Mangani Lal Mandal** (supra) cited by the petitioner, the Election Petitioner being the second best candidate successfully proved before the Election Tribunal that the petitioner having failed to submit the mandatory information materially affected her election as she lost by a narrow margin because the voter was bereft of the necessary information about the petitioner



herein. Mere absence of the said sentence cannot be the reason to set aside a well reasoned order in the background of the fact that the petitioner chose not to contest the case despite having knowledge of it. Thus **Mangani Lal Mandal** (supra) does not come to her rescue either.

63. So far as the case of **Jyoti Basu** (supra) is concerned, the Hon'ble Apex Court held that the Representation of the People Act has been held to be complete code within which an election dispute can be decided. This in the opinion of the Court cannot be disputed by the respondent no.4 too herein. However, the petitioner cannot derive any benefit from the said order.

64. Regarding the last case cited by the petitioner of **Kanimozhi Karunanidhi** (supra) is concerned, the Hon'ble Apex Court clearly held that an election petition is a serious matter and cannot be treated likely. However, how seriously the petitioner herself took up the election petition can be seen from the fact that the despite issuance of notice, she avoided after which it was affixed at her door. The registered cover notice sent to her was refused. while the Newspaper publication was purposely ignored. All these facts incorporated in the counter affidavit have not been refuted. In



that background, once her election was declared nullified, to come forward and claim that the election petition was not conducted by the Tribunal seriously is fit to be rejected. Every case has its own facts and circumstances and in the case of the petitioner, ***Kanimozhi Karunanidhi*** (supra) is not applicable.

65. All the issues framed decided against the petitioner herein, this Court holds that the order dated 29.08.2023 passed by the Election Tribunal in Election Petition No. 05 of 2021 is a well reasoned one and the writ petition being a frivolous petition is fit to be rejected.

66. Accordingly, ordered. The writ petition is dismissed.

(Rajiv Roy, J)

Ravi/-

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