

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1151 of 2017**

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Sukati Son of Sadique Mian Resident of village - Kanchanpur, Kuer Toli, P.O.  
P.S. and Block - Manjhi, District Saran at Chapra

... .. Appellant/s

Versus

1. The State Election Commission Panchayat and Ors
2. The State Election Commissioner, State Election Commission Panchayat ,  
Sone Bhawan, Birchand Pate
3. The Secretary, the State Election Commission Panchayat, Sone Bhawan,  
Birchand Patel Path, Patna
4. The District Election Officer Panchayat, Saran at Chapra, District Saran at  
Chapra
5. The Returning Officer Panchayat Election, Manjhi Block, District Saran at  
Chapra
6. Akhtar Ali Son of Late Jan Mohammad Resident of village - Manjhi Mali  
Tola, P.O. P.S. and Block Manjhi, District - Saran at Chapra
7. Navratan Kumar Prasad, Son of Raja Ram Prasad, Resident of village -  
Chaubah Asthan, P.O. and P.S.- Manjhi, District - Saran at Chapra
8. Anil Sharma, Son of Sakaldeo Sharma, Resident of village - Uttar Tola, P.O.  
and P.S.- Manjhi, District - Saran at Chapra
9. Ekbal Ahmad, Son of Jafar Imam, Resident of village- Dharni Das Ke  
Mathiya, P.O. and P.S.- Manjhi, District - Saran at Chapra
10. Akhtari, Wife of Shamshad Ali, Resident of village - Takiya, P.O. and P.S.-  
Manjhi, District - Saran at Chapra
11. Mohammad Daud, Son of Md. Shahid, Resident of village - Mali Tola, P.O.  
and P.S.- Manjhi, District - Saran at Chapra
12. Madan Nut, Son of Late Lal Bahadur Nut, Resident of village - Takiya, P.O.  
and P.S.- Manjhi, District - Saran at Chapra
13. Shivdas Sharma, Son of Late Sakaldeo Sharma, Resident of village - Godha,  
P.O. and P.S.- Manjhi, District - Saran at Chapra
14. Dwarika Sharma, Son of Sundar Lal Sharma, Resident of village -  
Kanchanpur, P.O. and P.S.- Manjhi, District - Saran at Chapra
15. Nasim Ahmad, Son of Md. Sadique Hussain, Resident of village - Mali Tola,  
P.O. and P.S.- Manjhi, District - Saran at Chapra
16. Mojammil Hussain, Son of Nasim Ahmed, Resident of village - Mali Tola,  
P.O. and P.S.- Manjhi, District - Saran at Chapra

... .. Respondent/s

with

**Letters Patent Appeal No. 1173 of 2017**

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Akhtar Ali Son of Late Jam Mohammad, Resident of Village- Manjhi,  
District-Saran at Chapra

... .. Appellant/s

Versus

1. Sukati and Ors. Son of Sadique Mian, Resident of Village- Kanchanpur, Kuer  
Toli, Post Office and Police Station- Manjhi, District-Saran
2. The State Election Commission Panchayat, Sone Bhawan, Birchand Patel  
Path, Patna through the State Election Commissioner.



3. The State Election Commissioner, the State Election Commission Panchayat, Sone Bhawan, Birchand Patel Path
4. The Secretary, the State Election Commission Panchayat, Sone Bhawan, Birchand Patel Path, Patna.
5. The District Election Officer Panchayat, Saran at Chapra.
6. The Peturning Officer Panchayat Election, Manjhi Block, District-Saran at Chapra.
7. Navratan Kumar Prasad, Son of Rajaram Prasad, Resident of Village-Chaubah Asthan, P.O. and P.S. Manjhi, District-Saran at Chapra.
8. Anil Sharma, Son of Sakaldeo Sharma, Resident of Village-Uttar Tola, P.O. and P.S. Manjhi, District-Saran at Chapra.
9. Ekbal Ahmad, Son of Jafar Imam, Resident of Village-Dharni Das ke Mathiya, P.O. and P.S. Manjhi, District-saran at Chapra.
10. Akhtari, Wife of Shamshad Ali, Resident of Village-Takiya, P.O. and P.s. Manjhi, District-Saran at Chapra.
11. Mohammad Daud, Son of Md. Shahid Resident of Village-Mali Tola, P.O. and P.S. Manjhi, District-Saran at Chapra.
12. Madan Nut, Sono f Late Lal Bahadur Nut, Resident of Village-Takiya, P.O. and P.s. Manjhi, District-Saran at Chapra.
13. Shivdas Sharma, Son of Late Sakaldeo Sharma, Resident of Village-Godha, P.O. and P.s. Manjh District-Saran at Chapra.
14. Dwarika Sharma, Son of Sunder Lal Sharma Resident of Village-Kanchanpur, P.O. and P.S. Manjh District-Saran at Chapra.
15. Nasim Ahmad, Son of Md. Sadique Hussain, Resident of Village-Mali Tola, P.O. and P.S. Manjhi, District-Saran at Chapra.
16. Mojammil Hussain, Son of Nasim Ahmed, Resident of Village-Mali Tola, P.O. and P.S. Manjhi, District-Saran at Chapra.

... .. Respondent/s

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**Appearance :**

(In Letters Patent Appeal No. 1151 of 2017)

For the Appellant/s	:	Mr. P.K.Shahi, Sr. Adv. Mr. S.B.K.Mangalam, Adv. Mr. Anita Kumari, Adv.
For the Respondent/s	:	Mr. Amit Srivastava, Adv. Mr. Sanjeev Nikesh, Adv. Mr. Sanjay Kumar Gupta, Adv.

(In Letters Patent Appeal No. 1173 of 2017)

For the Appellant/s	:	Mr. Harish Kumar, Adv.
For the Respondent/s	:	Mr.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**and**  
**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 13-02-2019**



This appeal filed under Clause 10 of the Letters Patent of the High Court of Judicature at Patna questions the order dated 09.08.2017 passed by a learned Single Judge of this Court in C.W.J.C. No.9220 of 2016 whereby the writ petition has been dismissed.

In the nature of dispute that engages this Court in the present appeal, we deem it proper to briefly discuss the facts leading to the appeal.

The matter relates to election to the post of Mukhia, Gram Panchayat Raj Manjhi (East) in the district of Saran. According to the appellant- writ petitioner, he is an elector from Manjhi Assembly Constituency although his name incorrectly appears at Serial No. 635, Part 113 of the voter list prepared for the Assembly Election, 2015, to read as Nasiruddin Mian son of Sadique Mian and copy of which is enclosed at Annexure-1 to the writ petition. It is the case of the appellant-petitioner that when the Panchayat Election, 2016 was announced and the list of voters was published by the District Election Officer, his name again appeared as Nasiruddin Mian at Serial No. 287, Ward No. 5, a copy of which is enclosed at Annexure-2. The appellant petitioner filed an application with the Booth Level Officer, Booth No.120, Manjhi Assembly Constituency in Form 8 for correction of his name in the



voter list to read as 'Sukti' in place of 'Nasiruddin Mian' which application was filed on 20.02.2016. He contends that on the recommendation of the Booth Level Officer correction was made in the voter list of the Manjhi Assembly Constituency and the name of the Nasiruddin Mian was replaced by 'Sukti', the correct name of the appellant writ petitioner. According to the appellant, this correction took place much before the last date of filing of nomination and a copy of which is enclosed at Annexure-4

The appellant- petitioner contends that having got the corrections made in the Assembly Electoral Roll, the provision of Section 126 which allowed him be on electoral roll of the Gram Panchayat stood satisfied and so the appellant- petitioner filed his nomination on 09.03.2016 which was accepted by the Returning Officer. The election was held on 24.04.2016 and it is at this stage that the respondent No.6 filed a complaint with the 'Commission' on 04.05.2016 alleging that the appellant-writ petitioner was not a voter in the Gram Panchayat rather it is one Nasiruddin Mian who is a voter at Serial No.287 and thus the appellant- petitioner was not eligible to contest the election. Copy of such complaint dated 04.04.2016 is enclosed at Annexure-5 to the writ petition. It is on receipt of the complaint that the 'Commission' called for a report from the District Election Officer, Saran who in turn directed the



District Panchayat Raj Officer to submit his report. According to the petitioner, a report was submitted by the Block Development Officer- cum- Returning Officer, Manjhi vide letter No.457 dated 17.05.2016 explaining the correct facts, a copy of which is enclosed at Annexure-6. It is the case of the petitioner that on receipt of the report the respondent Commission vide letter bearing No.4846 dated 28.5.2016 impugned impugned at Annexure-7 to the writ petition while allowing the counting process to continue, directed the District Magistrate cum District Election Officer(Panchayat) to declare the election result only after receiving directions in this regard from the Commission. It is at this stage that the petitioner feeling aggrieved by the directions of the respondent- Commission present in the letter dated 28.05.2016 came before this Court through the writ petition in question.

While the matter was pending consideration before this Court that directions were issued by the respondent Commission through letter No. 4518 dated 08.06.2016 whereby the candidature of the appellant- petitioner for the post of Mukhia was cancelled and direction issued for holding fresh election on 15.6.2016 from amongst the remaining 11 candidates. The appellant- petitioner by filing I.A. No. 4727 of 2016 brought on record the direction of the respondent- 'Commission' as contained in the letter dated



08.06.2016 seeking leave of this Court to question the said order of the 'Commission'.

By order dated 15.06.2016, the learned Single Judge allowed the election as well as the counting process to go on but restrained the publication of result of the election. The Interlocutory application so filed was subsequently allowed by the learned Single Judge vide order passed on 16.08.2016 and leave was granted to the appellant-petitioner to challenge the order dated 08.06.2016 which was impugned at Annexure-8. By order dated 23.08.2016 leave was granted to the appellant- petitioner to implead the candidates who contested the election following the order dated 08.06.2016. Notice was issued to these candidates but only respondent No.6, the complainant and the respondent No.7 the candidate who secured the maximum votes in the second round election, chose to appear through counsel.

The writ petition was heard and the learned Single Judge by the judgment and order dated 09.08.2017 has been pleased to dismiss the writ petition; the interim order dated 15.06.2016 whereby the declaration of result of the second round election was stayed, was vacated and the learned Single Judge directed for declaration of the result ignoring a letter of the 'Commission' dated 21.06.2016 which was placed on record vide Annexure-13 to the



supplementary affidavit whereby the directions were issued for declaration of result only after recounting of the votes in view of the complaint made by the respondent No.6, making allegations of bungling in the counting process. Feeling aggrieved the writ petitioner as appellant is before this Court.

L.P.A. No. 1173 of 2017 which is being heard analogous, has been filed by the complainant- Akhtar Ali, feeling aggrieved by that part of the order of the learned Single Judge whereby he has directed for declaration of the result on the basis of the counting already carried out despite cognizance taken by the 'Commission', on his complaint regarding bungling in the counting process.

Mr. P.K. Shahi, learned Senior counsel assisted by Mr. S.B.K. Mangalam, Advocate on record has appeared for the appellant- writ petitioner, the State Election Commission and its functionaries are represented by Mr. Amit Srivastava assisted by Mr. Sanjeev Nikesh, the respondent No.6 is represented by Mr. Harish Kumar and the respondent No. 7 has appeared through Mr. Sanjay Kumar Gupta.

Mr. Shahi has questioned the jurisdiction of the 'Commission' to stay the declaration of the result vide letter dated 28.05.2016 impugned at Annexure-7 to the writ petition.



According to Mr. Shahi, the 'Commission' has no jurisdiction to issue such order once the election process is completed and only the declaration of result was awaited. It is his argument that this illegality was perpetuated by the Commission in issuing the second order dated 08.06.2016 whereby the election itself has been cancelled and a consequential order for holding reelection on 15.06.2016 was issued, which order also directs for cancellation of the candidature of the appellant-petitioner to contest such election.

According to Mr. Shahi, the name of the appellant-petitioner appeared incorrectly in the Assembly Voter list even though the photograph of the appellant-petitioner appeared at Serial No.635 and it is for this reason that on 20.02.2016 an application was filed by the appellant petitioner for correction of name vide Annexure-3 to the writ petition which was received by the Booth Level Officer. He submits that the voter list was corrected on 08.03.2016 and on the following day i.e 09.03.2016, the appellant-writ petitioner filed his nomination which was neither objected to, at that stage nor during scrutiny on 10.03.2016 or even until the date of polling on 24.04.2016. While reiterating the sequence of events as already mentioned, he submits that the position has been clarified by the Returning Officer cum Block Development Officer, Ekma, Saran who has mentioned that



although the name of 'Nasiruddin Mian' was mentioned in the voter list but has been corrected subsequently in the Assembly voter list. Learned counsel in particular reference to the clarification given by the Returning Officer cum Block Development Officer has stated that after the clarification given by the Returning Officer, the 'Commission' had no jurisdiction to interfere with the election. It is submitted that the 'Commission' has acted in excess of jurisdiction to countermand the election held on 24.04.2016 and to hold fresh election on 15.06.2016.

It is further the submission of Mr. Shahi in reference to Annexure- R/3 to the counter affidavit filed on behalf of the 'Commission' in the writ proceeding that the Commission itself vide letter dated 09.03.2016 addressed to all District Magistrate cum District Election Officer (Panchayat) issued in connection with filing of nomination, advised them that in case the name of any candidate appears in the Assembly voter list for the Election 2015 but does not find mention in the voter list of the Panchayat election, the nomination of such of the candidate should not be rejected. It is further advised that in such case, the District Magistrate cum District Election Officer (Panchayat) after being satisfied may allow addition of such names in the voter list of the Panchayat and obtain permission from the 'Commission'.



According to Mr. Shahi, in view of such clear stipulation present in the advisory dated 09.03.2016 of the Commission, once correction was carried out in the Assembly voter list of 2015 election, much prior to the holding of election and pursuant where to nomination was accepted by the Returning Officer, then the Election Commission had no jurisdiction to interfere with such acceptance of nomination even if it could be raised through an election petition.

Learned counsel in reference to the powers vested in the Commission under Section 136(2) of 'the Act' submits that even if an issue of disqualification from membership can be examined by the Commission before or after the election but once the name of the appellant petitioner had been accepted by the Returning Officer then its acceptance could only be challenged by raising an election dispute and the 'Commission' had no business thereafter to cancel the membership of the appellant petitioner which act has no lawful sanction. Learned counsel in support of his submission that the 'Commission' cannot sit in appeal over the decision of a Returning Officer, has relied upon the following judgments:

**(i) 2017 (4) PLJR 142 paragraphs 16 to 19 (Smt. Kumkum Devi versus the State Election Commission)**



**(ii) 2017 (1) PLJR 225 paragraph 17 onwards  
[(Bibha Devi versus the State Election  
Commission (Panchayat)]**

**(iii) 2013(2) PLJR 114 paragraphs 16 to  
18(Prafful Chandra Sudhanshu versus the State  
Election Commission)**

Learned Senior counsel appearing for the appellant-petitioner next chooses to assail the order of the Election Commission to stay the result of the election held on 24.04.2016 followed by the directives present in letter dated 08.06.2016 whereby, the election held on 24.04.2016 was countermanded and a fresh election was directed to be held on 15.06.2016, as well, the candidature of the appellant petitioner was cancelled, on grounds, that the decision was taken in violation of principles of natural justice inasmuch as no opportunity of hearing was given to the appellant- petitioner before his legal right to contest the election was taken away.

The arguments of Mr. Shahi has been opposed by Mr. Amit Srivastava, learned counsel appearing for the 'Commission'. According to Mr. Srivastava while the judgments relied upon by Mr. Shahi are relating to Municipal Election there is a distinction between, the statutory provisions regulating Municipal Elections



than those regulating the Panchayat Elections. In reference to Rule 47 of the Bihar Municipal Election Rules, he submits that while the decision of the Returning Officer is final in so far as the Municipal Elections are concerned, there is no such corresponding provisions present in the Bihar Panchayat Election Rules, 2006. It is submitted that since the State Election Commission has the responsibility, not only of preparation of electoral roll but also to conduct the election of the local bodies and to maintain purity therein, that they are empowered to take any decision at any stage of election or even thereafter especially, where it goes to the root of the matter.

Learned counsel next refers to Annexure R/5 to the counter affidavit filed on behalf of the 'Commission' in appeal to submit that on receipt of a complaint on the candidature of the appellant- petitioner, a copy of which is enclosed at Annexure-5 to the writ petition that the State Election Commission directed the District Magistrate cum District Election Officer(Panchayat), Saran to hold an enquiry and file report which was submitted by the District Magistrate on 26.05.2016 enclosing the copy of the report dated 17.05.2016 of the Returning Officer cum Block Development Officer. He next refers to a letter of the District Election Officer cum District Magistrate, Saran dated 6.12.2016 at



Annexure- R/7 to the reply to the supplementary affidavit filed on behalf of the 'Commission' in the writ proceedings to submit that the District Magistrate had reported after enquiry that 'Sukti' and 'Nasiruddin Mian' are two different persons.

Learned counsel next refers to the guidelines present in the letter dated 12.11.2015 of the State Election Commission addressed to all District Magistrates cum District Election Officers (Panchayat) for preparation of the voter list at Annexure- R/1 to the affidavit of the Commission filed in appeal to submit that as per the calendar of events attached to the guidelines, the draft voter list was to be published from 28.12.2015 to 11.01.2016 and disposal of objections were to take place on 28.12.2015 to 18.01.2016 and not thereafter. According to Mr. Srivastava, in view of the election programme so published, no application for correction of name could be entertained after 18.01.2016.

Learned counsel refers to the provisions of Section 126 to submit that while it stipulates that all those who are enrolled as voters in the electors roll of the State Legislative Assembly or that part of the rolls which is concerned with the territorial constituency of the Gram Panchayat, shall be electors for the concerned Panchayat but the proviso attached thereto prohibits any changes in the electoral roll after notification of the date of



Panchayat Election under Section 124. It is thus submitted that no changes in the electoral roll could be made after the last date notified for such correction and in case the name of the petitioner was not appearing in the voter list even if his photograph was appearing, yet he could not participate in the election in view of the stipulation present in Section 135 of 'the Act'.

According to Mr. Srivastava, any application for correction of name had to be submitted by the elector before the 'Commission' as manifest from the first proviso to Section 126 but in the present case the appellant-petitioner approached the Booth Level Officer who is not the appropriate authority to make any changes in the Panchayat electoral roll. According to Mr. Srivastava, the Form (३) attached with the guidelines is for addition of the name in the voter list and not for correction thereof. It is submitted that no application was filed by the appellant-petitioner before the 'Commission' for correction of his name and any application given before any authority other than the 'Commission' is of no value.

It is submitted that even if the photograph of the petitioner was present in the voter list as claimed by him but until such time that the name of the petitioner entered the voter list, he was not qualified to contest the election. Learned counsel makes



reference to paragraph 10 of the counter affidavit filed on behalf of the 'Commission' in appeal which gives the election programme, to submit that any complaint on names should have been received by the 'Commission' latest of 18.01.2016 and since according to the petitioner himself, the complaint against the name was filed only on 20.02.2016 even if that has led to the correction in the Assembly voter list, it does not ipso facto lead to correction in the voter list prepared by the State Election Commission. Learned counsel has made reference to a judgment of the Supreme Court reported in **(1996)6SCC 342 (Ashok Kapil versus Sanahullah & Ors.)** and in reference to paragraph 7 of the judgment, he submits that petitioner cannot be allowed to take advantage of his own folly.

Learned counsel responding to the challenge to the jurisdiction of the 'Commission' posed by the appellants, has relied upon the Constitution Bench judgment of the Supreme Court rendered in the case of **Mahinder Singh Gill & Anr. versus Chief Election Commission (AIR 1978 SC 851)** and in reference to paragraphs 121 and 122 of the judgments, he submits that the opinion expressed by the Supreme Court answers the challenge of jurisdiction. He submits that the Constitution Bench has held that an election covers the entire process from the stage of issue of



notification until the declaration of result and even if the election so held is cancelled by the 'Commission' to order for fresh poll it is an integral part of the election process. He submits that there was no error in the exercise of jurisdiction by the Commission and the argument of Mr. Shahi to comment upon such exercise simply because the election was held, stands answered by the judgment of the Supreme Court. He submits that such order of the Commission, even if, can be tested on its own merit but it certainly cannot be tested on jurisdiction.

Learned counsel next refers to a judgment of the Supreme Court reported in **(2006) 8 SCC 352 (Kishan Singh Tomar versus Municipal Corporation of the City of Ahmadabad)** and in reference to the opinion present at paragraphs 23 to 26 of the judgment, he submits that the power to conduct election would include a power to countermand as well as to hold reelection.

Mr. Srivastava while responding to the charge made by Mr. Shahi regarding the order dated 08.06.2016 being passed in violation of the principles of nature justice whereby the candidature of the petitioner was cancelled, has made reference to the judgment of the Supreme Court reported in **AIR 2014 SC 1290** and in particular reference to the opinion at paragraph 7 of the



judgment, he submits that it has been settled by the Supreme Court that statutory requirement relating to election law has to be strictly adhered and doctrine of equity etc. are unknown and do not apply to such dispute. He thus submits that since the complaint made by the respondent No.6 was found to be true and despite the name of the appellant petitioner not finding place in the voter list yet he was allowed to participate in the election by the Returning Officer and which position yet remains uncontested because yet the Panchayat voter list does not carry the name of the writ petitioner rather the name of the Nasiruddin Mian yet appears against the photograph claimed by the petitioner, he could not have been allowed to participate in the election.

Mr. Srivastava in support of his argument that the Election Commission has a duty and responsibility to maintain the purity of election, has referred to the judgment of the Supreme Court reported in **AIR 2015 SC1 (Krishna Moorthy versus Siva Kumar)**. Learned counsel has also referred to a judgment of the learned Single Judge reported in **2001(1)PLJR516 (Neeraj Singh versus State Election Commission)** and in reference to the opinion present in paragraphs 13,15 and 16 he submits that the import of Section 135 of 'the Act' has been discussed to hold that unless the name of the candidate appears in the voter list he cannot



be qualified to be elected as a member of the Panchayat. He submits that this opinion of the learned Single Judge has been affirmed by the Division Bench in L.P.A. No.1567 of 2017.

Learned counsel also placing reliance on the judgment of the **Bibha Devi** (supra) so relied upon by the Shahi, has made reference to the opinion at paragraph 21 to submit that the role of the Election Commission on the conduct of election until the result is published stands recognized by the division bench. Learned counsel in reference to the statement present at paragraph 8 of the writ petition, submits that the petitioner has admitted that he filed application in Form 8 under Rule 26 of Representation of Election Rules and which act of the appellant- petitioner may be correct for inclusion of name in the voter list of the Assembly Constituency but is not sufficient for inclusion in the Panchayat Voter list. Learned counsel has referred to Rule 19 to 23 of the Bihar Panchayat Election Rules, 2006 to submit that the jurisdiction is vested exclusively in the Election Commission to make correction in the voter list and not in the Booth Level Officer.

It is thus submitted by Mr. Srivastava that in the circumstances discussed, the opinion of the learned Single Judge warrants no interference.



Mr. Sanjay Gupta appearing for the returned candidate i.e respondent No.7 simply adopts the argument advanced by Mr. Srivastava to submit that the judgment and order of the learned Single Judge requires no interference.

The respondent No.6 is represented through Mr. Harish Kumar, the appellant in the analogous appeal and his grievance is that his prayer for recounting of the votes polled in the second election held on 15.06.2016, though is recognized by the State Election Commission but has been incorrectly turned down by the learned Single Judge to direct for publication of the result and to that extent he is aggrieved by the judgment and order of the learned Single Judge.

Mr. Shahi in his short reply has submitted that in view of the stipulations present in Section 126 of 'the Act' even if no application was filed for correction of the name of the appellant in the Panchayat voter list but no sooner, the Assembly voter list was corrected to include the name of the appellant- petitioner vide Annexure-4 to the writ petition which is much prior to the election, there was no infirmity by the Returning Officer to accept the nomination of the petitioner or to allow him to participate in the election.



We have heard learned counsel for the parties and we have perused the records.

The case in hand has its own peculiarities because it is after the election has been held and when stage is set for counting and announcement of results that the State Election Commission has ventured to enter into to the dispute raised by the complainant respondent No.6 and by the order impugned at Annexure-7 to the writ petition dated 28.05.2016, while allowing counting of votes to be completed, the Commission has restrained the announcement of result thereof and directed the District Magistrate- cum-District Election Officer (Panchayat) to announce the result only after obtaining permission from the Commission. It is at this stage that the appellant-petitioner moved this Court because according to him he had succeeded in election and should have been declared elected but for the restraint order. It is while the matter was pending disposal before this Court that another order was passed by the State Election Commission on 08.06.2016 impugned at Annexure-8 to I.A. No. 4727 of 2016 filed in the writ proceedings whereby the candidature of the appellant- petitioner was cancelled; direction was issued to institute criminal case against the appellant- petitioner; the election held on 24.04.2016 was cancelled and fresh election was announced on 15.06.2016 from



amongst the remaining 11 candidates of which counting was to be done on 16.06.2016. The counting process was restrained by order passed on 15.06.2016 by the learned Single Judge which was vacated subsequently by the final order passed on the writ petition.

Although rather exhaustive and lengthy arguments have been advanced by the contesting parties on the contest raised but in our opinion the action complained of by the appellant-petitioner when tested against arguments in defence, put by Mr. Srivastava, primarily raises the following issues for consideration:

(a) Whether the 'Commission' has exceeded its jurisdiction in restraining the publication of result of the election held on 24.04.2016 followed by the order dated 08.06.2016 countermanding the election after cancelling the candidature of the appellant- petitioner and to direct for fresh election which has taken place on 15.06.2016.

(b) Whether in view of the stipulations present in Section 126 of 'the Act', the correction made in the voter list of the Assembly Election which is the foundation for preparation of the voter list for Panchayat Election, would imply a correction in the Panchayat voter list consequentially.

(c) Whether the application of the appellant- petitioner dated 20.02.2016 seeking correction in the Assembly voter list of



2015 election is in accordance with the stipulations present in 'the Act', the Rules framed thereunder and the calendar of events published for the purpose contained in the letter dated 12.11.2015 of the 'Commission'.

(d) Whether the correction in the Assembly voter list vide Annexure-4 to the writ petition qualifies the appellant- writ petitioner for contesting the Panchayat election.

(e) Whether the denial of opportunity of representation to the appellant-petitioner has rendered the orders unsustainable.

In our opinion, these are the issues which have been broadly raised by the parties and which requires an answer by this Court.

Having considered the submissions advanced by the learned counsel for the parties, we are of the opinion that it is only if the 'Commission' is able to sail past the jurisdictional challenge posed by Mr. Shahi learned Senior counsel as reflected at Item-(a) above, would there be any occasion for us to move down the list for in case the arguments of Mr. Shahi persuades us to comment adversely on the exercise of jurisdiction by the 'Commission' especially, where the election was held, counting carried out and only the declaration of results was to take place, then the other issues do not invite any opinion.



According to Mr. Shahi, the jurisdiction of the 'Commission' is delineated by the provisions underlying Section 136 and unless any of the issues noted in the said provisions comes up for consideration, before or after the election, the 'Commission' cannot usurp such jurisdiction. On the other hand according to Mr. Srivastava, that the 'Commission' has been conferred with the responsibility of holding a fair election maintaining its purity, any issue which goes to the root of the matter even if, may not find mention in Section 136 yet, it would not in any manner restrict the absolute jurisdiction vested in the Commission to hold the election in a fair manner by maintaining its purity.

Section 123 of 'the Act' confers jurisdiction on the State Election Commission of superintendence, direction and control in preparation of electoral rolls and for conduct of elections to the Panchayat bodies under 'the Act' and the rules framed thereunder.

Section 136 of 'the Act' lists the circumstances which would disqualify a person for contesting any election or even after the election has been held and Section 136(2) thereof vests jurisdiction in the Commission to take a decision where any such issue comes up for consideration, whether before or after the election.



Section 126 of 'the Act' provides for preparation of electoral roll and inter alia stipulates that all such persons who are enrolled as voters in the electoral roll or any part thereof relating to the State Legislative Assembly Constituency for the time being in force which is concerned with the territorial constituency of any Gram Panchayat, shall be the voters for the concerned Panchayat elections. In other words, all such voters whose name is present in the voter list prepared for the State Legislative Assembly constituency connected with the territorial constituency of a Gram Panchayat shall be voters for the Panchayat elections.

Heavy reliance is placed by Mr. Shahi on Section 126 and on the advisory issued by the State Election Commission in its letter dated 09.03.2016 at Annexure R/3 to their counter affidavit filed in the writ proceedings which inter alia provides that even if the name of any person does not find mention in the voter list of the Panchayat but if his name is present in the State Assembly voter list for the 2015 election, the nomination filed by such person may be accepted and along side the District Magistrate was directed to take steps for inclusion of the name of such person in the voter list of Panchayat while taking permission from the Commission at the same time.



In our opinion, the advisory issued by the 'Commission' dated 09.03.2016 is absolutely in tune with the provisions of Section 126 and is in the larger interest of holding a fair election. In fact, the proviso to Section 126 allows the State Election Commission to either suo motu or on a representation received from any aggrieved person, to make changes in the electoral rolls of the territorial constituency of a Panchayat, as it may deem fit and proper, however, such discretion is restricted by the second proviso which provides that no such change can be made after the notification is issued under Section 124 for Panchayat election by the Governor.

Mr. Shahi has relied upon the judgment of **Smt. Kumkum Devi** (supra) to canvass the issue that the Commission had no jurisdiction to interfere with the decision of the Returning Officer in accepting the nomination of the appellant-petitioner and that once the nomination was accepted by the Returning Officer, its correctness could only be seen in an election petition. To the same effect has learned counsel made reference to the judgment rendered in the case of **Bibha Devi**(supra) and **Prafful Chandra Sudhanshu** (supra) to submit that rejection or acceptance of a nomination, is not a matter concerning efficient conduct of



elections and thus the Commission could not have interfered with the election.

In our opinion, the legal position is well settled and there cannot be any contest on the issue advanced that the 'Commission' has no jurisdiction to interfere with the final decision of the Returning Officer in accepting or rejecting a nomination because the Commission does not sit as an appellate authority over the action of the Returning Officer. The issue however, which engages this Court has nothing to do with the acceptance/rejection of nomination rather the issue is that if the name of the appellant-petitioner was neither appearing in the voter list of the State Assembly for the 2015 elections nor in the Panchayat voter list 2016, could the appellant- petitioner yet participate in the Panchayat election. In our considered opinion neither the reliance by Mr. Shahi to the provisions of Section 126 of 'the Act' nor to the advisory dated 09.03.2016, would come to the aid of the appellant petitioner if his name did not appear in either of the two electoral rolls even if the Assembly electoral rolls got corrected mid way through the notification of the election.

The order of the State Election Commission put to challenge through Annexure-8 to the interlocutory application would confirm that the nomination of the appellant petitioner has



not been cancelled by the Commission rather it is the candidature of the appellant- petitioner in Form 9 which is the list of contesting candidates prepared in terms of Rule 43 of 'the Rules' framed under 'the Act' which has been cancelled.

Section 135 of 'the Act'. provides for qualification for membership of a Panchayat and inter alia mandates that every person whose name appears in the voter list, shall unless disqualified under 'the Act' or under any other law in force, shall be qualified to be elected as a member/office bearer of a Panchayat. A combined reading of Section 126 read alongside Section 135 would discern that it is only if the name of a person is appearing in the State Assembly voter list that he is qualified for entering the electoral roll of the Panchayat and consequently to contest any election from the said constituency. The statutory provisions further shows that in case the name of a person though appearing in the State Assembly list of the concerned Constituency which is concerned with the territorial constituency of a Gram Panchayat, does not appear in the voter list of the Gram Panchayat, then he needs to get his name included by filing his objection before the State Election Commission in terms of the proviso to Section 126.



It is apparently taking note of such circumstances where the name of a person though appeared in the Assembly Voter list but did not appear in the Panchayat Voter list, that the State Election Commission issued the advisory on 09.03.2016 directing the District Magistrate cum District Election Officer (Panchayat) concerned to allow such candidate to file nomination, include his name in the Panchayat voter list and alongside seek approval of the Commission thereon.

The discussions above would allow us to conclude on the issue that unless the name of a contestant is appearing in the State Assembly Voter list in force at the relevant time, he can not participate in the election.

Section 136(2) of 'the Act' allows the 'Commission' to examine any complaint relating to disqualification of a member of a Panchayat at any level whether before or after election subject to any disqualification mentioned in Section 135 i.e whether he was qualified for membership. There is no gainsaying that the jurisdiction vested in the 'Commission' to examine issues of disqualification of a member of a Panchayat under Section 136(2) is after he gains the membership of any Panchayat. In our opinion, the legislative intent of the provision which allows the 'Commission' to examine the issue of qualification of a member of



a Panchayat before or after the election read alongside Section 123 which vests power in the Commission of superintendence in preparation of Electoral Roll and conduct of a fair election, inheres a jurisdiction in the 'Commission' to examine all such issues even prior thereto especially, where the 'Commission' is satisfied on the records present, that any candidate is disqualified from contesting the election. Obviously, in such state, the Commission is not in shackles to sit back and to wait until the election is over and a person who was disqualified to contest should take oath of office bearer before any such exercise is carried out.

Section 135 of 'the Act' mandates that unless the name of a person enters the voter list he cannot be elected as a member, Section 136(1)(b) inter alia provides that a person will be disqualified for election if he is so disqualified by any law for the time being in force for election to the legislature of the State. Section 5(c) of the Representation of Peoples Act, 1951 is parimateria to Section 135 of 'the Act' and mandates that a person has to be an elector for any Assembly Constituency as a qualification for obtaining membership of the Legislative Assembly.



As we have observed the issue is not of acceptance or rejection of nomination rather the issue is whether or not the appellant petitioner was an elector in the State Assembly and whether his name was appearing in the Assembly voter list of 2015 election because it is only in such situation that he was qualified to gain membership of the Panchayat. In the undisputed circumstances noted where undisputedly the name of the appellant- petitioner neither did appear in the Assembly Voter list for the concerned constituency nor in the Panchayat Voter list and the appellant took no steps to get the error corrected until 20.2.2016 even when the last date for such purpose in terms of the circular dated 12.11.2015, was 18.01.2016 for getting the changes made in electoral roll. It is thus rightly canvassed by Mr. Srivastava that even if the Returning Officer in such circumstances had accepted the nomination, it did not preclude the 'Commission' to examine the issue whether or not the appellant petitioner was qualified for such membership and if not, then a mere acceptance of nomination did not preclude the 'Commission' from examining such matter, which went to the root of matter because it was a part of the electoral process.

We would be borrowing the words from the expression of the Constitution Bench in the case of **Mohinder**



**Singh Gill** (supra) at paragraph 121 which applies with all force to the issue and the relevant extract of which runs under:

"As already pointed out, it is well-settled that election covers the entire process from the issue of the notification under [Section 14](#) to the declaration of the result under [Section 66](#) of the Act. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefor, with the amended date, is passed as an integral part of the electoral process. We are not concerned with the question whether the impugned order is right or wrong or invalid on any account. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the elections....."

A similar issue, when fell for consideration before the Supreme Court where an election held, was countermanded and fresh poll ordered, the Supreme Court held that it was within the jurisdiction of the Election Commission to take a decision because it formed an integral part of the electoral process and the correctness of such decision could be tested before the appropriate forum but no jurisdictional issue arose.

There is no contest that the State Election Commission exercises identical powers under Section 123 read alongside rule 19 to 23 of the rules, for preparation of electoral roll and conduct of election as vested in the Election Commission of India under Article 324 of the Constitution of India which was put up for consideration in the case of **Mohinder Singh Gill** (supra).



The discussions above is sufficient to hold that in the nature of responsibility cast on the State Election Commission to conduct the Panchayat elections right from the stage of preparation of the electoral roll under the provisions of 'the Act' which alongside vests jurisdiction in the State Election Commission to examine the issue of membership even after the election is held, there is no error in exercise of jurisdiction by the Commission in the decision making process, which has led to the impugned orders and we say so because the issue of membership goes to the root of the matter as unless the name of any candidate appears in the State Assembly Elector roll in force at the relevant time, he cannot in any circumstances participate in the election or cast his vote and in such circumstances the acceptance or rejection of a nomination is of no consequence nor would preclude the 'Commission' to exercise jurisdiction and decide the issue of candidature of any person, to contest the election. May be after the results was declared such issue could have been raised by the aggrieved person either under Section 136(2) or by taking recourse to Section 137 of 'the Act' but where the results of the election held were put on stay by the order dated 28.05.2016 impugned at Annexure- 7 to the writ petition followed by the order countermanding the election itself dated 08.06.2016 impugned at Annexure-8 to the



writ petition, that the election itself stood countermanded, the said stage never arose. That the State Election Commission has power to countermand any election if the 'Commission' is satisfied that such reasons exists for issuing such order of countermand, since we have upheld the exercise by the Commission on the jurisdictional issue, it is to be seen whether or not the order of countermand is sustainable on the reasons assigned i.e the failure of the appellant- writ petitioner to get his name entered either in the State Assembly voter list for the Election 2015 or in the Panchayat voter list, 2016 within time.

The voter list of the State Assembly Election 2015 is at Annexure-1 to the writ petition and mentions the name of the petitioner as Nasiruddin Mian at serial No.635. It is not in dispute that neither 'Nasiruddin Mian' is the name of the petitioner nor does he carry any such 'alias'.

The advisory of the 'Commission' to the District Magistrate cum district Election Officer(Panchayat) on the preparation of electoral roll as contained in the letter dated 12.11.2015 is at Annexure- R/1. Paragraph 2 of the advisory manifests that the voter list is to be prepared in tune with Section 126 of 'the Act' and every person whose name is appearing in the State Assembly voter list should be the electors for the concerned



Panchayat constituency. Paragraph 5 of the advisory provides for the publication of the voter list prepared in tune with Section 126 of 'the Act' read alongside Rule 19 to 23 of the rules framed thereunder. Paragraph 8 provides that the list would be in force for 14 days for inviting objections as per the provisions of paragraph 8 and which would be disposed of as per paragraph 11. Paragraph 12 provides for supplementary list and the final publication is discussed in paragraph 13. The relevant dates in tune with these stipulations are a part of the advisory and for the present purpose, the relevant dates would be as follows:

- (a) Publication of the draft voter list : 28.12.2015 to 11.1.2016
- (b) Disposal of objection: 28.12.2015 to 18.1.2016
- (c) Approval of the 'Commission' for additions: up to 16.01.2016
- (d) Final publication of voter list: 25.1.2016

Now even when the draft voter list was published on 28.12.2015 and objections were to be disposed of until 18.01.2016 with the final publication to take place on 25.1.2016, the appellant-petitioner never bothered to avail of the right vested under the first proviso to Section 126 for getting his name corrected in the voter list.

It is a matter of record that whereas the name of the appellant- petitioner is mentioned as 'Nasiruddin Mian' in the



Assembly voter list vide Annexure-1, the Panchayat voter list mentions his name as 'Shamsuddin Mian'. Despite such position no steps were taken by the petitioner to get his name corrected in the Assembly voter list or the Panchayat Voter list rather it is after the time expired as per the advisory dated 12.11.2015 for filing objections and for making corrections in the voter list, that the appellant petitioner took steps in this direction by filing an application in Form 8 under rule 13(1) and Rule 26 of the Registration of Electoral Rolls, 1960 for correction of his name in the State Assembly voter list and which application also was filed on 20.02.2016 i.e much after the date for seeking such correction, had expired on 18.01.2016.

No doubt the name of the appellant- petitioner was corrected in the State Assembly Voter list as manifest from Annexure-4 but in my opinion this correction would not satisfy either the stipulation present in Section 126 or the concession given by the State Election Commission as present in their letter dated 09.03.2016 at Annexure- R/3 to the counter affidavit of the Commission filed in the writ proceeding which allowed the District Magistrate cum District Election Officer(Panchayat) to permit such of the candidate whose name figured in the State Assembly voter list for the election 2015 to file their nomination



even if it did not appear in the Panchayat Voter list and thereafter to take steps for including their name in the Panchayat voter list after obtaining permission from the 'Commission'. The reason is plain and simple and that is because, this liberty was extended only to those whose name was already appearing correctly in the State Assembly voter list for 2015 and not to those who got their name corrected in the State Assembly voter list after expiry of the period mentioned in the advisory i.e 09.03.2016. We find it strange that even though the name of the appellant-petitioner appeared as Nasiruddin Mian in the State Assembly voter list of 2015, he never bothered to get it corrected until the declaration of the Panchayat election or even thereafter. We also find it strange that even when his name read as Shamsuddin Mian in the Panchayat Voter list 2016, the appellant petitioner took no steps for getting it corrected. What is more strange is that despite such glaring disparities in names was occurring in the two voter list of the appellant- writ petitioner and even when he was intending to contest the Panchayat election, he never bothered to either move the State Election Commission under the proviso to Section 126 read alongside Rule 19 to 23 of the rules framed thereunder for correction of the name rather after more than a month of expiry of such liberty that he chose to establish his right by taking recourse



of the Registration of Electoral Rolls, 1960 for getting his name corrected in the Assembly voter list and though Annexure 4 certifies corrections but that in our opinion would not take the clock back for the appellant petitioner to qualify him for the election in question.

For the reasons and discussions above, we find absolutely no infirmity in the decision of the State Election Commission impugned at Annexure-7 and 8 to the writ petition nor do we find any infirmity in the opinion expressed by the learned Single Judge passed on the writ petition in upholding such decision. That the order of stay on the declaration of result of the election held on 15.06.2016 was vacated by the learned Single Judge rightly ignoring the plea of the respondent N.6 for recount, and following which the respondent No.7 has been declared elected no further consequential order needs to be passed.

The issues so framed by us stands answered accordingly.

L.P.A. No.1151 of 2017 is accordingly dismissed but without any order as to costs.

**Re:L.P.A. No.1173 of 2017**

In this appeal the respondent No.6 as appellant before this Court questions the order of the learned Single Judge to the extent it directs for publication of result, ignoring the order of the



Commission for a recount. We find absolutely no reason to interfere with the opinion of the learned Single Judge even on this count especially where liberty is already given to the parties to approach the appropriate forum in case the relevant law permitted them to do so.

L.P.A. No.1173 of 2017 is accordingly dismissed.

**(Jyoti Saran, J)**

**( Arvind Srivastava, J)**

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.03.2019
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