Rubi Devi Vs State Of Bihar And Ors

Court: Patna High Court

Date of Decision: July 6, 2020

Acts Referred: Bihar Panchayat Raj Act, 2006 â€" Section 82, 83(1), 83(1)(a), 83(1)(b), 86(4), 100(1)(d)(iii), 101, 102, 135, 140
Civil Procedure Code, 1908 â€" Order 7 Rule 11
Bihar Panchayat Election Rules, 2006 â€" Rule 81(1)
Conduct Of Election Rules, 1961 â€" Rule 93

Hon'ble Judges: Anil Kumar Upadhyay, J

Bench: Single Bench

Advocate: Mayuri, Ravi Kumar Singh, Md. Raisul Haque, Amit Shrivastava, Girish Pandey, Shashi Bhushan Kumar Mandalam, Anita Kumari, Archana Meenakshee

Final Decision: Disposed Of

Judgement

1. Heard Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the petitioner in CWJC No. 17369 of 2019, Ms. Mayuri assisted by Mr. Ravi

Kumar Singh, on behalf of the petitioner in CWJC No. 19034 of 2019, Mr. Amit Srivastava assisted by Mr. Girish Pandey on behalf of the Election

Commission and counsel for the State.

2. In both the writ applications the dispute relates to election of Mukhiya of Karbandiya Gram Panchayat in the district of Rohtas at Sasaram.

Undisputedly, the recounting of votes for election of Mukhiya was completed on 3rd of June, 2016 but the certificate of election in favour of Priya

Kumari was issued on 2nd of June, 2016, i.e. one day ahead the recounting of votes.

3. CWJC No. 17369 of 2019 was filed by Priya Kumari for setting aside the order dated 31.07.2019 passed by the Munsif 1st, Rohtas in Election

Petition No. 6 of 2016 filed by Rubi Devi, petitioner of CWJC No. 19034 of 2019, by which the election of Priya Kumari as Mukhiya of the Gram

Panchayat in question was declared as void, whereas, CWJC No. 19034 of 2019 has been filed by Rubi Devi challenging the part of the judgment and

order dated 31.07.2019 passed in Election Petition No. 6 of 2016 to the extent that Rubi Devi may be declared elected as Mukhiya of the said Gram

Panchayat in consonance with 140 of the Bihar Panchayat Raj Act, 2006, (hereinafter referred to as Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢).

4. Before adverting to the rival contentions of the parties in both the writ applications, which was heard on different dates and judgment was recorded

on 30.06.2020, it would be appropriate to notice the relevant findings in the Election Petition No. 6 of 2016, dated 31.07.2019. The relevant findings of

the Munsif 1st Sasaram are as follows:

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5. The 73rd amendment of the Constitution of India was made with a view to ensure effective Panchayati Raj Institution as part of grass root

democracy but it is more often than not hijacked by corrupt practices, influence and patronage of the bureaucrats.

6. Priya Kumari, the petitioner of 17369 of 2019 , challenging the decision in Election Petition No. 6 of 2016, has pleaded the following facts in the writ

application, which are relevant for deciding these two writ applications.

Election of Karwandiya Gram Panchayat Raj in the district of Sasaram was held on 24.4.2016; counting of votes had taken place on 03.06.2016; the

certificate of election in favour of the Priya Kumari was issued on 03.06.2020 but date in certificate was mentioned as 02.06.2016. Priya Kumari

secured highest votes and thus she was declared elected by the Returning Officer. Rubi Devi, petitioner of CWJC No. 19034 of 2019 filed Election

Petition No. 6 of 2016 against the election of Priya Kumari as Mukhiya of the said Gram Panchayat on the ground of illegality and irregularity during

the course of counting of ballot papers. After admission of the case and notice Priya Kumari appeared before the Munsif and filed her written

statement denying all the allegations levelled against her in the election petition. Thirteen issues were framed by the learned Munsif. Rubi Devi

examined six witnesses and documents exhibited as Exts. 1 to 6. Priya Kumari examined six witnesses and also produced documentary evidence as

FIR of Sasaram P.S.Case No. 506 of 2016 as Ext. 8. No efforts was made by Rubi Devi to examine official witnesses. On 31.7.2019, the Munsif has

set aside the election of Priya Kumari as Mukhiya of Karwandiya, Sasaram Gram Panchayat and directed the District Magistrate-cum- District

Election Officer for recounting of votes under his supervision and for declaration of result in favour of the candidate who had secured majority of valid

votes in the said process of election.

7. On behalf of Rubi Devi, in the writ petition, statement has been made that Form-21 under Rule 81 manifests serious irregularity committed by the

Returning Officer by cutting and overwriting without signature and without following the rules. She claimed that the Priya Kumari was declared

elected by manipulation of votes in connivance with the officials. Form-21 i.e. the certificate in terms of Rule 81(1) of the Bihar Panchayat Election

Rules, 2006, was issued in favour of Priya Kumari one day ahead the counting. On the strength of the aforesaid pleadings, Rubi Devi claims that in

terms of Section 140 of the Act, the Munsif-1, was required to declare Rubi Devi as elected Mukhiya of Gram Panchayat in question instead of

direction to recounting of votes. There is also statement that it was only the Tribunal which was required to declare the next candidate elected who

has secured the highest number of valid votes but the Tribunal has adopted the course of directing the District Election Officer for recounting of votes

under his supervision.

8. Mr. S.B.K. Mangalam, learned counsel appearing on behalf of Priya Kumari, in support of his writ application, has submitted that the election

petition was defective and there was no disclosure of full particulars and as such the decision on the said election petition was uncalled for and

baseless. He submitted that in the absence of any material to show that the candidates other than Priya Kumari have obtained more votes, the

declaration of result in favour of Priya Kumari cannot be said to be void and perverse. He submitted, with reference to various judgments of the Apex

Court, that in the absence of full particulars directin of recounting is unconstitutional. He relied upon the judgment in the case of Bhabhi Vs. Sheo

Govind and others: AIR 1975 SC 2117 particularly, paragraph 15 of the said judgment has been relied by him, which is quoted below:-

Ã¢â‚¬Å“15. Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions

are imperative before a Court can grant inspection, or for that matter sample inspection, of the ballot papers :

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and

indefinite allegations;

(2) That before inspection is allowed, the allocations made against the elected candidate must be clear and specific and must be supported by

adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the

parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a

view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court

regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials. If all these circumstances enter into the mind

of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper.Ã¢â‚¬‹

Mr. Mangalam next relied upon the judgment of the Apex Court in the case of Beliram Bhalaik Vs. Jai Behari Lal Khachi and another: AIR 1975 SC

283 to contend that the Court would be justified in ordering recounting of votes only in two circumstances. Paragraph 45 of the aforesaid judgment is

quoted below:-

Ã¢â‚¬Å“45. Since the pronouncement of this Court in Ram Sewak Yadav v. Hussain Kamal Kidwai and Ors. (1964) 6 SCR 238 = (AIR 1964 SC 1249) it

is settled law that Sections 100(1)(d)(iii). 101, 102 of the Act and Rule 93 of the Conduct of Election Rules, 1961 implicitly give the Court trying an

election petition the power to order a recount or production of the ballot papers and permit their inspection by the parties. Since an order for a recount

touches upon the secrecy of the ballot papers, it should not be made lightly or as a matter of course. Although no casteiron rule of universal application

can be or has been laid down, yet from a beadroll the decisions of this Court, two broad guide lines are discernible : that the Court would be justified in

ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in

counting are founded, are pleaded adequately in the election petition, and (ii) the Court Tribunal trying the petition is prima facie satisfied that the

making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties see Ram Sewak

Yadav v. Hussain Kamal Kidwai (supra) Dr. Jagjit Singh vs Giani Kartar Singh, AIR 1966 SC 773 Jitendra, Bahadur Singh v. Krihna Behari (1970) 1

SCR 852 = (AIR 1970 SC 276) and Smt. Sumitra Devi v. Shri Sheo Shankar Prasad Yadav AIR 1973 SC 215.Ã¢â‚¬‹

Mr. Mangalam also relied upon the judgment of the Apex Court in the case of Jyoti Basu and others Vs. Deb Ghosal and others: AIR 1982 SC 983.

Paragraph Nos. 7 to 11 of the said judgment is quoted below:

Ã¢â‚¬Å“7. The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the Constitutional and statutory

provisions in relation to these rights have been explained by the Court in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors.,

1952 SCR 218 (AIR 1952 SC 64) and Jagan Nath v. Jaswant Singh. AIR 1954 SC 210. We proceed to state what we have gleaned from what has

been said, so much as necessary for this case.

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 nor the principles of Equity apply but only those

rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the

statutory 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 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 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 rights 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 say?

9. Sec. 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may

be none else. Sec. 82 is headed ""Parties to the petition"" and clause (a) provides that the petitioner shall join as respondents to the petition the returned

candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting

candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Sec. 82 requires the petitioner

to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Sec. 86 (4) enables any candidate

not already a respondent to be joined as a respondent. There is no other provision dealing with question as to who may be joined as respondents. It is

significant that while clause (b) of Sec. 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice

are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are

made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent

under Sec. 86 (4), any other person cannot, under that provision seek to be joined as respondent, even if allegations of any corrupt practice are made

against him. It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The

ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties'

enter the picture at all ? We think that the concept of 'proper parties' is and must remain alien to an election dispute under the Representation of the

People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Sec. 82 and Sec. 86 (4) and no others.

However desirable and expedient it may appear to be, none else shall be joined as respondents.

10. It is said, the Civil Procedure Code applies to the trial of election petitions and so proper parties whose presence may be necessary in order to

enable the Court 'effectually and completely to adjudicate upon and settle all questions involved' may be joined as respondents to the petitions. The

questions is not whether the Civil Procedure Code applies because it undoubtedly does, but only 'as far as may be' and subject to the provisions of the

Representation of the People Act, 1951 and the rules made thereunder. Sec. 87 (1) expressly says so. The question is whether the provisions of the

Civil Procedure Code can be invoked to permit that which the Representation of the People Act does not. Quite obviously the provisions of the Code

cannot be so invoked. In Mohan Raj v. Surendra Kumar Taparia & Ors.,(1) this Court held that the undoubted power of the Court (i.e. the Election

Court) to permit an amendment of the petition cannot be used to strike out allegations against a candidate not joined as a respondent so as to save the

election petition from dismissal for non- joinder of necessary parties. It was said, ""The Court can order an amendment and even strike out a party who

is not necessary. But where the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined,

the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the

Representation of the People Act and any rules made thereunder. When the Act enjoins the penalty of dismissal of the petition for non-joinder of a

party the provisions of the Civil Procedure Code cannot be used as a curative means to save the petition."" Again, in K. Venkateswara Rao & Anr. v.

Bekkam Narasimha Reddi and Ors.,(1) it was observed:

Ã¢â‚¬Å“With regard to the addition of parties which is possible in the case of a suit under the provisions of O.l r. 10 subject to the added party right to

contend that the suit as against him was barred by limitation when he was added, no addition of parties is possible in the case of an election petition

except under the provisions of Sub-sec. (4) of Section 86"".

11. The matter may be looked at from another angle. The Parliament has expressly provided that an opportunity should be given to a person who is

not a candidate to show cause against being 'named' as one guilty of a corrupt practice. Parliament however, has not thought fit to expressly provide

for his being joined as a party to the election petition either by the election-petitioner or at the instance of the very person against whom the allegations

of a corrupt practice are made. The right given to the latter is limited to show cause against 'named' and that right opens up for exercise when, at the

end of the trial of the election petition notice is given to him to show cause why he should not be 'named'. The right does not extend to participation at

all stages and in all matters, a right which he would have if he is joined as a party at the commencement. Conversely the election petitioner cannot by

joining as a respondent a person who is not a candidate at the election subject him to a prolonged trial of an election petition with all its intricacies and

ramifications. One may well imagine how mischievous minded persons may harass public personages like the Prime Minister of the country, the Chief

Minister of a State or a political leader of a national dimension by impleading him as a party to election petitions, all the country over. All that would be

necessary is a seemingly plausible allegation, casually or spitefully made, with but a facade of truth. Everyone is familiar with such allegations. To

permit such a public personage to be impleaded as a party to an election petition on the basis of a mere allegation, without even prime facie proof, an

allegation which may ultimately be found to be unfounded, can cause needless vexation to such personage and prevent him from the effective

discharge of his public duties. It would be against the public interest to do so. The ultimate award of costs would be no panacea in such cases, since

the public mischief cannot be repaired. That is why public Policy and legislative wisdom both seem to point to an interpretation of the provisions of the

Representation of the People Act which does not permit the joining, as parties, of persons other than those mentioned in Sections 82 and 86 (4). It is

not as if a person guilty of a corrupt practice can get away with it. Where at the concluding stage of the trial of an election petition, after evidence has

been given, the Court finds that there is sufficient material to hold a person guilty of a corrupt practice, the Court may then issue a notice to him to

show cause under Sec. 99 and proceed with further action. In our view the legislative provision contained in Sec. 99 which enables the Court, towards

the end of the trial of an election petition, to issue a notice to a person not a party to the proceeding to show cause why he should not be 'named' is

sufficient clarification of the legislative intent that such person may not be permitted to be joined as a party to the election petition.Ã¢â‚¬â€‹

Lastly, Mr. Mangalam has relied upon the judgment of the Apex Court in the case of Virender Nath Gautam Vs. Satpal Singh and others: (2007) 3

SCC 617, paras 29 to 31, 34 and 53 to 55 are the detailed discussions on the issue of pleading and action and the Course to be adopted in the election

petition. The said paragraphs are quoted below for ready reference:

Ã¢â‚¬Å“29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of

'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full

statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such

election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as

the Code"") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice

and particulars thereof.

30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not

stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act

read with clause (a) of Rule 11 of Order VII of the Code.

31. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means

'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal

Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or

defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars

could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however,

absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or

defence are material facts and must be stated in the pleading by the party.Ã¢â‚¬â€‹

34. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be

pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the

other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to

the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and

would not take the opposite party by surprise.

53. On an additional ground also, the order of the High Court is liable to be set aside. All allegations in Para 8 of the Election Petition, as also sub-

paras (i) to (iv) of para 8 relate to improper and illegal reception and acceptance of votes and the election-petitioner has challenged the election of the

returned candidate on that ground and not on the ground of 'corrupt practice'. He was, therefore, required to state material facts in the Election

Petition under Section 83(1)(a) of the Act. It was, however, not necessary to 'set forth full particulars', which is the requirement of Section 83(1)(b) of

'any corrupt practice'.

54. The High Court dismissed the petition inter alia on the ground that paras 8(i) to (iv) lacked in material particulars. Apart from the fact that the law

does not require material particulars even in respect of allegations of corrupt practice but only full particulars and if they are lacking, the petition can

be permitted to be amended or amplified under Section 86 of the act, in the instant case, Clause (b) of Section 83(1) had no application and the petition

has been dismissed by the High Court by applying wrong test. On that ground also, the order passed by the High Court is unsustainable [Vide Harkirat

Singh v. Amrinder Singh, (2005) 13 SCC 511].Ã¢â‚¬â€‹

Mr. Mangalam also relied upon a judgment of the Patna High Court in the case of The State Election Commission & Ors. Vs. Punam Kumari & anr.:

2009(2) PLJR 189, para 10 of which is quoted for ready reference:-

Ã¢â‚¬Å“10. As noted above, on the basis of the judgment and order under appeal the matter has been gone in by the Commission and the Commission has

rendered a decision. The question is whether the decision is valid or not. For what we have discussed above it appears to us that the disqualification

mentioned in section 135 of the Act cannot be gone in by the Commission. The Commission being a creature of the Statute can function and discharge

its duties within the four corners of the Statute and cannot assume or be vested with any power which has not been vested in it by the Statute. If the

Commission had no authority to go into the question, as was decided by it, such authority could not be vested in it by exercising power under Article

226 of the Constitution of India, for the simple reason that the Article 226 authorizes the Court to uphold legal right of a citizen which right stands

vested in the citizen and that signifies that the writ court cannot vest any right in a citizen which does not vest in him. That being the situation, the

conclusion would be that the decision of Election Commission rendered on the basis of the command of the writ court being a decision rendered by a

Forum non-juris, the same is invalid.Ã¢â‚¬â€‹

9. Ms. Mayuri, learned counsel appearing on behalf of Rubi Devi has referred to the scheme of the Bihar State Panchayati Raj Act and the Rules

framed thereunder. She submitted that once the tribunal has come to the conclusion that the election of Priya Kumari is void, the natural corollary of

such conclusion is to declare the petitioner Rubi Devi as elected Mukhiya of Karbandiya Gram Panchayat as Reubi Devi received the maximum

number of valid votes. She placed reliance on the judgment of the Division Bench of this Court in LPA No. 2142 of 2015, para 36 to 38 of which are

quoted below for ready reference:-

Ã¢â‚¬Å“36. It would appear from a perusal of Section 140 of the Act that once a candidate is declared elected, it is only the prescribed Authority, i.e., the

Election Tribunal, which can declare such election tobe void and declare the other candidate, as the case may be, to have been duly elected. These

provisions do not vest such power in the State Election Commission or the Election Officer. It was only the prescribed Authority, which is the Tribunal

in the present case, to have declared such other candidate as duly elected subject to review by higher courts.

37. In the case at hand, the learned Tribunal, instead of declaring respondent No. 6, who has secured the second highest number of valid votes, as the

returned elected, directed the State Election Officer to ascertain the position and make a declaration accordingly. The learned single Judge, too,

overlooked the matter. Though we are in agreement with the view of learned single Judge that the appellant is not entitled to any relief, yet we

disagree with the second limb of the order, whereby the learned single Judge has upheld the direction of the Election Tribunal requiring the Election

Officer to ascertain as to who, among the contestants, had secured next highest valid votes and to declare him returned accordingly.

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, Ã¢â‚¬Ëœthe 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 doneÃ¢â‚¬â„¢, and direct the learned Tribunal to pass necessary order, in accordance with law, in the light of what has been pointed

out above.Ã¢â‚¬â€‹

10. Mr. Amit Srivastava assisted by Shri Girish Pandey, learned counsel appearing on behalf of the Election Commission in both the cases, submitted

that the Court exercising certiorari jurisdiction can not only set aside the order on perusal of the record but the Court can also modify the order in

exercise of power and jurisdiction under Article 226 of the Constitution of India. He submitted that the issuance of certificate before the counting,

goes to the root of election and as such, there is no infirmity in the decision of learned Munsif that election of Mukhiya of Karbandiya, Sasaram Gram

Panchayat is void. However, he submits that in case of recounting the tribunal was required to undertake the process of recounting and declare the

result.

11. From the conspectus of discussions made hereinabove and the submissions made by the parties and also on consideration of the various judgments

of the Apex Court, the Court is of the considered view that it is true that election law is trite law and election petition has to be examined in terms of

strict rule of pleading and the election should not be casually interfered with by the Court hearing the election petition. But from the pleadings available

on record and on going through the findings of the court below, three circumstances are indicative of the fact that the election of Priya Kumari as

Mukhiya of Karbandiya, Sasaram Gram Panchayat was contrary to the constitutional scheme of 73rd amendment. Firstly, the counting of the votes

was made on 03.06.2016 whereas, the certificate was issued one day ahead the counting i.e. 02.06.2016. For the first time Priya Kumari has stated

that due to mistake in the certificate the date was mentioned as Ã¢â‚¬Ëœ2.6.2016Ã¢â‚¬â„¢ instead of Ã¢â‚¬Ëœ3.6.2016Ã¢â‚¬â„¢. This pleading for the first time emerged

after recording of finding and on perusal of the certificate of returned candidate, it is apparent that the date 02.06.2016 was written at two places in

bold letter and in the entire certificate there is no other date mentioned to suggest that 02.06.2016 was wrongly mentoned in place of 03.06.2016.

Secondly, from the findings recorded by the court below and also on perusal of various annexures enclosed with the writ applications before this

Court, it is apparent that large number of cuttings have been made in Form-21, which was exhibit 2 before the court below. In additional thereto, form

20V-II, which was Ext. 3 series and also enclosed with CWJC No. 19034 of 2019, indicates that large number of cuttings have been made at various

places and thirdly, despite direction of the tribunal to the Election Officer-cum-Block Development Officer to produce all the forms, incomplete forms

were submitted and it was noted by the learned Munsif that the Election Officer-cum- Block Development Officer vide letter dated 9.7.2019 has

reported that form-20 Part-I of table number 19, 20, 21, 23, 25 to 30 are not available in the office. In the aforesaid backdrop of the facts, the Tribunal

has arrived at a conclusion that the election of Mukhiya of Karbandiya, Sasaram Gram Panchayat is void. This Court in the totality of the fact

situation, does not find any infirmity in the findings recorded by the Munsif, Sasaram in Election Petition No. 6/2016.

12. Adverting to the claim of Rubi Devi that as a consequence of declaring the election of Priya Kumari as void, Rubi Devi should have been declared

elected in terms of Section 140 of the Act. Ordinarily, the Tribunal is required to declare the candidate who has received maximum number of valid

votes as elected after setting aside the election of the returned candidate, but in this case the Tribunal has arrived at a conclusion that cuttings are not

only with regard to entries of Priya Kumari but also with regard to entries of Rubi Devi and, as such, the Tribunal has directed the District Magistrate,

Sasaram to ensure recounting of votes under his supervision.

13. In the totality of the fact situation, the Court is of the view that the counting itself was vitiated on account of cutting, overwriting, non-production of

form-20 and issuance of certificate one day ahead the counting, in the fitness of things, it would be appropriate that there should be recounting of votes

of the entire booths. I have no hesitation to add that the Apex Court has time and again reiterated the principle that if after quashing of one illegal

order, another illegal order revive then the Court would not interfere with the order. Reference in this connection may be made to the judgment of the

Apex Court reported in AIR 1966 SC 828, AIR 1970 SC 645 and (1988) 1 SCC 40. There are large number of cases where this principle has been

stated and restated by the Apex Court. Therefore, in the totality of the fact situation, instead of quashing the order dated 31.7.2019 passed in Election

Petition No. 6/2016 it is modified to the extent that the Tribunal is directed to ensure recounting of votes within a period of one month from the date of

receipt/production of a copy of this order and all concerned are directed to provide entire Ballot Papers of the Panchayat in question to the Tribunal

for the needful. The entire process of recounting should be on CCTV Camera.

14. Accordingly, it is hereby declared that the office of the Mukhiya of Karbandiya Gram Panchayat in the district of Rohtas at Sasaram shall be

treated as vacant on account of judgment of learned Munsif dated 31.07.2019 and recounting for the Office of Mukhiya of Karbandiya Gram

Panchayat should be carried out within the period of one month as indicated above.

15. In the result, CWJC No. 17369 of 2019 filed by Priya Kumari is dismissed and CWJC No. 19034 of 2019 filed by Rubi Devi is disposed of in the

manner as indicated above.