

(2010) 09 PAT CK 0127**Patna High Court****Case No:** Election Petition No. 3 of 2009

Ram Badan Rai

APPELLANT

Vs

Rajiv Ranjan Singh

RESPONDENT

Date of Decision: Sept. 23, 2010**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

V.N. Sinha, J.

Sole Respondent has filed application, Flag-1 raising preliminary objection for summary dismissal of the election petition under Sub-section (1) of Section 86 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") asserting non-compliance of the mandatory provisions of Sub-section (1)(a), (b) of Section 83 of the Act, as according to the sole Respondent the election petition does not disclose complete cause of action, is fit to be dismissed under Order VII, Rule 11 of the Code of Civil Procedure. During hearing of the preliminary objection as also in the written submissions filed in support of the preliminary objection it has been submitted that election-Petitioner alleged in the election petition that sole Respondent captured booth as also solicited, procured help from the officials for success in the election but the election petition, according to the sole Respondent, miserably failed to disclose, alleged against the sole Respondent material facts and full particulars constituting the serious allegation of booth capturing and procuring help from the officials for winning the election, for noncompliance of the mandatory provisions contained in Sub-section (1)(a), (b) of Section 83 of the Act, the election petition is fit to be dismissed under Order VII, Rule 11 of the Code of Civil Procedure. In this connection it is submitted on behalf of the sole Respondent that the contents of paragraphs 9 to 16 of the election petition are vague, general in nature not constituting any specific allegation of booth capturing or procuring help from the officials made out against the Respondent, in the circumstances, the election petition is fit to be dismissed summarily for not disclosing any cause of action. As

regards allegations made out in paragraph 17 of the election petition it is submitted that thereunder Superintendent of Police, Lakhisarai is alleged to have captured Booth Nos. 62 to 72 of Lakhisarai Vidhan Sabha Constituency preventing the genuine voters from casting their votes but according to sole Respondent the allegations contained in the said paragraph-17 does not constitute the charge of booth capturing against the sole Respondent as in the entire election petition nowhere it has been alleged that Superintendent of Police, Lakhisarai while capturing Booth Nos. 62 to 72 of Lakhisarai Vidhan Sabha Constituency was either acting as an agent of the sole Respondent or had captured those booths with his consent. The allegation of booth capturing by the Superintendent of Police, Lakhisarai without the consent of the sole Respondent will not constitute the allegation of booth capturing against the sole Respondent. In this connection reliance is placed on the provisions contained in Sub-section (8) of Section 123 of the Act read with its explanation as also on the provisions contained in Section 100(1)(d)(ii) of the Act and it is submitted that the overt act of capturing booth Nos. 62 to 72 of Lakhisarai Vidhan Sabha Constituency by the Superintendent of Police, Lakhisarai did not materially affect the result of the election as the margin of victory of Respondent is more than one lac votes and capturing of eleven booths by the Superintendent of Police, Lakhisarai had no bearing on his election. In this connection, it is further submitted that in the entire election petition Petitioner has not given even the name of a single elector who was prevented from voting on account of the booths being captured by the Superintendent of Police, Lakhisarai and others, as such, by not furnishing the name of the electors prevented from coming to the booth for exercising their franchise, election Petitioner has failed to furnish material fact(s) and he has only submitted allegations by quoting the provision of law and, thus, election petition suffers from material facts and is fit to be dismissed summarily. In support of the aforesaid contention learned Counsel for the Petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, paragraph-29, Azhar Hussain Vs. Rajiv Gandhi, and Ram Sukh Vs. Dinesh Aggarwal,

2. Counsel for the election-Petitioner has opposed the prayer and in support of his contention has also filed written submission. During the hearing of the preliminary objection it was submitted by the election-Petitioner with reference to the averments made in the election petition in paragraphs 8 to 13 that at the relevant time Respondent was the State-President of the ruling party and had ensured change of the entire set-up of the district administration in the entire Munger Parliamentary Constituency and officers of particular caste/his choice were posted in the Munger Parliamentary Constituency to brighten the election prospect of sole Respondent. It is also stated in the election petition that during the election campaign the workers of the election Petitioner was being harassed by the police administration of Lakhisarai, Munger district(s). Information about the harassment caused to the Petitioner and his political workers and supporters by the district

administration as also by the micro observer was given to the Chief Election Commissioner and others by the election agent of the Petitioner under representation dated 25, 29-4-2009, Annexures 4 and 3. Election agent of the Petitioner, further informed the District Magistrate, Munger under representation dated 28-4-2009, Annexure-5 that he has learnt that a call has been given by the naxalites to boycott the polls in Dharhara Block and Bangalwa area of 166 Jamalpur Vidhan Sabha Assembly Constituency and Para Military Forces be deputed in the Dharhara Block and Bangalwa area of 166 Jamalpur Vidhan Sabha Constituency so as to enable the voters of the Constituency to participate in the poll. Under representation dated 26, 27, 29-4-2009, as contained in Annexure-6 series the Chief Election Commissioner was requested by the election agent of the Petitioner to deploy Para Military Forces on booth Nos. 4 to 10, 13 to 23 of Pipariya Block, booth Nos. 35 to 37, 50 to 52, 57, 58, 62, 96, 97, 101, 102, 110 to 112, 149 to 151, 154, 166, 183, 187 to 189, 201 to 205, 207 to 210 of Suryagarha Block, Booth Nos. 211, 228, 229 of Lakhisarai Block of 167 Suryagarha Assembly Constituency, booth Nos. 9, 19 to 23, 25 to 43, 46 to 59, 62 to 73, 80 to 86, 88 to 93 of Barahia Block, booth Nos. 96 to 99, 103, 104, 106, 109, 110, 117, 118, 124, 125, 132 to 136, 191 to 194, 207, 208, 211, 212, 215, 226, 237 to 240, 243 to 246, 261, 268 to 270, 296, 298, 302, 311, 312, 330, 331 of Lakhisarai Block of 168 Lakhisarai Assembly Constituency, booth Nos. 50 to 58, 60 to 66, 68 to 73, 80, 81, 96, 97, 101, 102, 107, 133 to 135, 152, 153, 176, 180 to 184, 195, 196, 202, 203, 220, 221 of 179 Barh Assembly Constituency, booth Nos. 3, 4, 23, 24, 58 to 68, 100 to 103, 105 of 178 Mokama Assembly Constituency as election Petitioner apprehended booth capturing on those booths by the antisocial elements with the help of civil and police administration and, accordingly, requested that the booths be declared sensitive and given under the charge of the Para Military Forces for ensuring fair poll but the request contained in the representation was not acted upon result being that the booths were captured and 62-75% votes were polled on those booths in favour of the Respondent although on the other booth(s) of the constituency the poling was 45%. In paragraph 14 it has been asserted by the election-Petitioner that he learnt about the deep rooted conspiracy hatched by the Respondent and his men to influence and interfere with the free and fair polling on the day of poll throughout the constituency by capturing the polling booths.

3. In paragraphs 16 and 17 of the election petition, election Petitioner has asserted that on the date of poll i.e. 30-4-2009 there was large scale booth capturing by the supporters and men of Respondent with the aid and active support of the Government officials deputed at those booths and the Superintendent of Police, Munger and Lakhisarai actively participated in capturing booths. Highlighting the activity of the Respondent and the officials, election-Petitioner himself submitted as many as ten representation dated 30-4-2009 to the Chief Election Commissioner, which is contained in Annexure 8 series. Perusal of Annexure-8 series would indicate that election Petitioner gave details of the booth which were captured to brighten

the election prospect of the Respondent. Vide representation dated 30-4-2009, Annexure-8 and 8/1, election Petitioner and his election agent informed the Chief Election Commissioner, Election Commission of India, New Delhi that anti social elements with the help of local administration and the policemen posted at the booth had taken control of booth Nos. 193, 194 to 196, 198, 199 in 179 Barh Assembly Segment and booth Nos. 141, 142, 185, 186, 178 in 178 Mokama Assembly Segment and were preventing the voters of the weaker sections from exercising their franchise by resorting to violence. Having informed the aforesaid fact Petitioner and his election agent also requested the Chief Election Commissioner to ensure free and fair poll by immediately deploying Para Military Forces at the aforesaid booths so that free and fair poll may be conducted at the aforesaid booths. Under representation dated 30-4-2009, Annexure-8/2 election Petitioner informed the Chief Election Commissioner that his polling agent is not allowed to enter the polling booth of booth No. 100 in Salona village and booth Nos. 132 and 133 in Nagar Palika, Lakhisarai of 168 Lakhisarai Assembly Segment and bogus polling is continued on those booths preventing the voters of the weaker section from casting their votes and having given such information election Petitioner requested the Chief Election Commissioner to ensure free and fair poll on the aforesaid booths by deploying Para Military Forces immediately so that his polling agent on the aforesaid booths may observe free and fair poll. Under representation dated 30-4-2009, Annexure-8/3 election agent of the election Petitioner informed the Chief Election Commissioner that booth Nos. 25 to 55 of 168 Lakhisarai Assembly Segment has been captured by anti social elements in connivance with the administration. On booth Nos. 74, 124 of the same assembly segment the voters of weaker section have been deprived from casting their votes by the anti social elements. In the same representation election agent also informed that his apprehension expressed in representation dated 26, 27, 29-4-2009, Annexure-6 series that the polling booths of 168 Lakhisarai Assembly Segment and 167 Suryagarha Assembly Segment shall be captured has come true. He also stated in the same representation that booth No. 128 of Suryagarha Assembly Segment has been captured by Home Guard Jawans and genuine voters are not allowed to exercise their franchise. At booth No. 170 his polling agent is not even allowed to sit during the poll. Having given aforesaid information the election agent requested to immediately deploy Para Military Forces for ensuring peaceful poll so that his polling agent may at least sit at the booth and observe free and fair poll. Under representation dated 30-4-2009, Annexure-8/4 election Petitioner informed that booth No. 273 of 168 Lakhisarai Assembly Segment has been captured by miscreants. Booth Nos. 242 to 245 has been captured by anti social elements and booth Nos. 290 to 292 has been captured by the administration itself where 80 per cent votes have been cast. In the same representation he further informed that booth Nos. 100, 101, 110, 212 of 167 Suryagarha Assembly Segment has been captured by anti social elements. Booth No. 222 of 165 Munger Assembly Segment has been captured and at booth No. 141 of the same segment the administration is

harassing and preventing the genuine voters from casting their votes. In the same representation Petitioner further informed that in 178 Mokama Assembly Segment booth Nos. 9, 164 has been captured and at booth Nos. 171 to 174 voters of the weaker section have been deprived from exercising their franchise. Having given aforesaid information election Petitioner requested the Chief Election Commissioner to look into the matter and to do the needful to contain and check the role of the administration for ensuring free and fair poll. Under representation dated 30-4-2009, Annexure-8/5 the election Petitioner informed the Chief Election Commissioner that booth Nos. 935, 936 of 165 Munger Assembly Segment has been captured by the local administration and the Presiding Officer and genuine voters are being deprived of their voting right. In 166 Jamalpur Assembly Segment booth Nos. 124, 133, 152 administration is harassing and torturing the voters of the weaker section. In 178 Mokama Assembly Segment at booth No. 143 supporters of a particular candidate are only allowed to vote by the local administration and booth No. 15 of Lakhisarai Assembly Segment has been captured by anti social elements with the help of the administration. Having informed the Chief Election Commissioner about the aforesaid misconduct in conducting the election on the booths the election Petitioner requested the Election Commissioner to do the needful for protecting the voting rights of the bona fide voters. Under representation dated 30-4-2009, Annexure-8/6 election Petitioner informed the Chief Election Commissioner that in 168 Lakhisarai Assembly Segment booth Nos. 62 to 72 has been captured by the Superintendent of Police, Lakhisarai himself and in 167 Suryagarha Assembly Segment voting on booth Nos. 61, 96, 97 was boycotted by the voters of the locality in response to the announcement of the naxalites but polling staff and administration themselves voted on the three booths. Having given aforesaid information Petitioner requested the Chief Election Commissioner to do the needful to protect the faith of the masses in election process by restoring normalcy at the booths. Under representation dated 30-4-2009, Annexure-8/7 election Petitioner informed the Chief Election Commissioner that at 168 Lakhisarai Assembly Segment booth Nos. 78, 91, 101, 102 the administration is harassing the genuine voters and has virtually handed over the aforesaid booths to the miscreants. Booth Nos. 109, 110, 230, 254, 255, 256 has been captured by the anti social elements with the help of administration. In 178 Mokama Assembly Segment at booth Nos. 111(ka), 111(kha), 115, 186, 187, 195 administration is harassing the genuine voters as also pressurizing them to vote for particular candidate. In 167 Suryagarha Assembly Segment at booth Nos. 50 to 52, 57 to 60 the administration is not acting fairly and working for a particular candidate and genuine voters are not allowed to vote and the booth has been captured. In 166 Jamalpur Assembly Segment at booth Nos. 138 to 140 voters of the weaker section are tortured and not allowed to vote. At booth Nos. 31, 32 administration is working for a particular candidate. After giving information about the aforesaid facts to the Chief Election Commissioner, election Petitioner requested the Election Commissioner to ensure free and fair polling by deploying Para Military Forces immediately to ensure

peaceful polling. Under representation dated 30-4-2009, Annexure-8/8 election Petitioner informed the Chief Election Commissioner that at booth Nos. 65, 66, 71, 138 to 104, 214 of 166, Jamalpur Assembly Segment local administration is not allowing the supporters of other candidates except one whose name is open secret to exercise their franchise. He further informed that booth No. 78 of 167 Suryagarha Assembly Segment has been captured by miscreants with the support of the administration while the voters of booth Nos. 22, 23 are purposely harassed by the local administration. In 179 Bath Assembly Segment booth Nos. 39, 193, 197, 199, 207, 211 to 214 have been captured by supporters and armed personnel of a ruling party M. L. A. and in the same representation election Petitioner further informed that booth Nos. 5 to 7, 78, 79, 132, 133, 207, 260, 261, 270, 309, 311, 312, 316, 318 of 168 Lakhisarai Assembly Segment have been captured by the miscreants with the support of the local administration. It was also stated in the said representation that local administration not only remained silent but supported the anti social elements and thereby free and fair poll became a mockery and having given such information request was made to the Chief Election Commissioner to look into the matter and to do the needful so that public faith in the election system is restored. Under representation dated 30-4-2009, Annexure 8/9 Petitioner informed the Chief Election Commissioner that in 165 Munger Assembly Segment booth Nos. 3, 4, 7 has been captured by administration itself and booth Nos. 185, 186, 222 was captured by the miscreants. In 167 Suryagarha Assembly Segment booth Nos. 61, 96, 97 was captured by the polling staff with the help of administration. At booth No. 128 Homeguard Jawan polled maximum vote of the booth while booth Nos. 78, 100, 101, 110 to 112, 129 and 167 was captured by anti social elements. In 168 Lakhisarai Assembly Segment booth Nos. 124, 178, 179, 290 to 292 was captured by police personnel. Booth Nos. 62 to 72 was captured by Superintendent of Police, Lakhisarai himself. Booth Nos. 5, 6, 7 and 29 to 55, 90, 91, 98 to 100, 109, 110, 132, 133, 139, 208, 209, 230, 242 to 245, 260, 270, 273, 318, 320 and 321 has been captured by anti social elements. In 178 Mokama Assembly Segment Both No. 178 was captured by police personnel and Both Nos. 9, 85, 109, 164, 186, 187 has been captured by miscreants. In 179 Barh Assembly Segment booth Nos. 39, 40, 111 to 113, 139, 140, 193 to 199, 207, 211 to 214 has been captured by anti social elements including supporters of ruling party M. L. A. and thereby the genuine voters of weaker sections were deprived of their voting rights and the election process in the entire parliamentary constituency became a mockery on account of failure of the administration to ensure free and fair poll. Having given such information election Petitioner under the same representation requested the Chief Election Commissioner to personally look into the matter and cancel the poll held on the aforesaid 290 booths and order fresh polling after making necessary arrangement so that the genuine voters may exercise their franchise and faith of the people in the election process may be restored. It was also asserted in paragraph-17 that the party workers of the election-Petitioner videographed the booth capturing activity on the day of poll i.e. 30-4-2009 and video cassette shall be produced during the

hearing of the petition with the permission of the Court.

4. In view of the pleadings aforesaid learned Counsel for the election-Petitioner submitted that there was large scale booth capturing on 290 booths on the date of poll i.e. 30-4-2009 by the anti social elements led by the district administration Superintendent of Police, Lakhisarai, Munger, as would appear from the representation dated 30-4-2009 filed by the election-Petitioner and his agent, contained in Annexure-8 series which has materially affected the election of the Respondent and, thus, the election petition is fit to be tried by this Court and if the allegation of booth capturing, as has been asserted in Annexure-8 series is found proved, the election of the Respondent has to be set aside.

5. Learned Counsel for the election-Petitioner further submitted that booth capturing by any person including the officials of the district administration policemen, anti social elements is a corrupt practice within the meaning of Sub-section (8) of Section 123 of the Act and by such large scale booth capturing, as is evident from representation, Annexure-8 series the election of Respondent has been materially affected and even if the name of the genuine voters prevented from voting has not been furnished by the election Petitioner in the election petition or the annexures appended thereto the election petition should not be dismissed summarily as during the trial it has to be found whether the allegation of large scale booth capturing by the anti social elements officials of the district administration including the Superintendent of Police, Lakhisarai and Munger is correct or not and if after the trial such large scale booth capturing by the anti social elements, officials of the district administration, Superintendent of Police, Lakhisarai, Munger is found proved the election of the Respondent from Munger Parliamentary Constituency has to be set aside. Failure to furnish the name of the genuine voters who were prevented from exercising their franchise is not fatal to establish large scale booth capturing on the booths mentioned in the representation, Annexure-8 series. In any case, the name of the voters prevented from casting vote can always be furnished by the election-Petitioner upon such terms as to cost or otherwise, as is deemed fit by the High Court in terms of Sub-section (5) of Section 86 of the Act. In this connection, learned Counsel further stated that allegation of booth capturing by the anti social elements, against the officers of the district administration led by the Superintendent of Police, Lakhisarai, Munger has been clearly stated in the different paragraphs of the election petition and Annexure-8 series appended thereto, the names of the voters prevented can always be furnished subsequently under the orders of the High Court. Reliance in this connection was placed over the judgment of the Hon"ble Supreme Court in the case of [Raj Narain Vs. Indira Nehru Gandhi and Another,](#)

6. Learned Counsel for the election Petitioner further submitted that the stage to prove the ingredients of the offence of booth capturing as provided in the explanation to Section 135A of the Act shall arise during the trial of the election

petition or during the trial of the offence of booth capturing and for punishment. For the present those ingredients are not required to be looked into while considering the petition of the Respondent to dismiss the election petition for not disclosing the cause of action.

7. It was also submitted by the learned Counsel for the election Petitioner that at this stage the election petition is required to be read alone as it is well settled that in cases of preliminary objection it is to be seen whether the relief prayed for could be granted if the averments made in the election petition are proved to be true. For the purpose of considering the preliminary objection the averments in the petition should be assumed to be true and the Court has to find out whether the statement in the petition and annexure appended therewith disclose a cause of action or triable issue as such. In support of the aforesaid contention learned Counsel for the election Petitioner relied on the judgment of the Hon"ble Supreme Court in the case of D. Ramachandran Vs. R.V. Janakiraman and Others,

8. Having heard counsel for the sole Respondent, election-Petitioner as also having perused the election petition and the written submission filed on behalf of the parties, I am of the view that Petitioner has alleged in paragraphs 8 to 13, 16 and 17 the manner in which a deep rooted conspiracy was hatched to secure posting of officials of a particular caste of the choice of the Respondent in the Munger Parliamentary Constituency to brighten his election prospect and the officials of the district administration including the Superintendent of Police, Lakhisarai, Munger and other policemen indulged in large scale booth capturing together with anti social elements on the date of poll i.e. 30-4-2009, as is evident from the allegation set-out in the representation dated 30-4-2009, Annexure-8 series submitted by the election-Petitioner to the Chief Election Commissioner, Election Commission of India, contained in Annexure-8 series and the number of booths which are alleged to have been captured on the date of poll being 290 in number, may have materially affected the poll held on 30-4-2009 in favour of the Respondent. As such, a triable issue has been raised in the election petition and the annexures appended thereto which is required to be gone into during the trial of this election petition. The name of the voters who were prevented during the booth capturing as also the manner in which the booths were captured by the officials can always be furnished under the orders of the High Court in terms of Sub-section (5) of Section 86 of the Act.

9. In view of my findings above, the petition raising preliminary objection at Flag-1 is rejected. Respondent is directed to file his written statement within four weeks from today.