

(2002) 08 PAT CK 0121

Patna High Court

Case No: C.W.J.C. No. 1503 of 2002

Smt. Anita Devi @ Anita Acharya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 26, 2002

Hon'ble Judges: Ravi S. Dhavan, C.J; R.N. Prasad, J

Bench: Division Bench

Advocate: Rajendra Prasad Singh and A.K. Mallick, for the Appellant; S.K. Ghose for the State and Mr. K.B. Nath for State Election Commission, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This matter has been filed as a Public Interest Litigation by one Anita Devi to challenge the oath which was administered to two members of the Panchayat Samiti. She herself is not a person who stood for election and the question of her being returned as won, or lost does not arise. If the matter had been of a candidate then perhaps this petition would have been before another division of the Court. But, she has come to this Court declaring that this is a Public Interest Litigation and there are grave questions of powers which are matters of conflict between the District Magistrate and the Election Commission and these need to be resolved by the High Court. Nothing of the sort has happened. All that has happened is that the elected members concerned, to use a general expression, have been married twice. They have received their oath of office not once but twice. As Bihar goes into self Government after many decades, this lack of inexperience will cause mistake like the present one to happen.

2. In so far as rule 126 under the Bihar Panchayat Raj Act is concerned, it makes out clearly on who exactly has to administer oath. There is no confusion in so far as the rule is concerned.

3. Rightly or wrongly in a long letter dated 30 July, 2001 the District Magistrate was writing to the State Election Commissioner, Bihar, on certain confusions which have

taken place in the matter relating to Panchayat elections. In reference to the context, he particularly mentions at page 3 of his letter suggesting that the two elected members of the Samiti should be administered the oath all over again. This in itself was creating a confusion that the oath administered should be arranged yet again. In the circumstances, lest there be any confusion for the lost tenure, because of the second oath, of the members who were elected to the Panchayat Samiti, let there be no lack of confidence. The first oath is as good.

4. There is no grave question of law the matter which occasions a certificate from the High Court that between one or the other oath, one is irregular. Clearly, the petitioner who has brought the present PIL was taking a chance that the Court may by mistake declare one oath as illegal so as to cause a confusion in the election which has taken place.

5. The situation may be taken, as at best, an oath taken twice over. Obviously, the elected members will continue to function from the first oath which was given. However, law and the machinery for administering oath is contained in Rule 126 of the Bihar Panchayat Raj Rules, 1995.

6. Nothing more need be said in the present petition. Consigned.