

(2016) 03 PAT CK 0115

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 131 of 2016

Anant Kumar Singh @ Anant Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 188

Citation : (2016) 2 PLJR 851

Hon'ble Judges : Smt. Anjana Mishra, J.

Bench : Single Bench

Advocate : Mr. S.B.K. Mangalam and Mrs. Anita Kumari, Advocates, for the Appellant; Mr. D.K. Sinha and Mr. Abhinay Raj and Mr. Syed Arshad Alam (S.C.-3), Mr. Fakruddin Ali Ahmad and Ms. Anjum Perween - Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Smt. Anjana Mishra, J.(Oral) - Heard Mr. S.B.K. Mangalam, learned counsel for the petitioner, Mr. D.K. Sinha, learned Senior Counsel appearing on behalf of Respondent No. 5 and Mr. Syed Arshad Alam, learned Standing Counsel-3 for the State.

2. The petitioner being an elected member of the Bihar Legislative Assembly (hereinafter referred to as the "Assembly") seeks a direction from this Court under the extraordinary jurisdiction enshrined under Article 226 of the Constitution of India for producing him before the Speaker of the Assembly so as to enable him to subscribe to the oath of office as a Member of Assembly.

3. The facts which give rise to the present writ application is that the petitioner having been in custody contested the General Election held in the month of November, 2015 and was declared elected as a Member of the Assembly from 178, Mokama Assembly Constituency. At the time of the election, the petitioner was behind the bars and as such on the date which was fixed for taking of oath, the petitioner could not subscribe to the oath of office. Accordingly, faced with

the situation as to how, he would appear before the Speaker of the Assembly, the petitioner has now approached this Court for a direction from this Court for permitting him to appear before the Speaker of the House for subscribing to the oath of office.

4. It has been submitted by learned counsel for the petitioner that while other representatives have been administered oath, the petitioner shall suffer heavily, if within a reasonable period, he does not take oath of office and is not present before the Assembly. Referring to the provisions of Article 188 of the Constitution of India, learned counsel for the petitioner has submitted that as soon as the Member is declared elected, he is required to appear and take oath of office which he has been unable to do on account of his incarceration. He has submitted that he has requested Respondent No. 3, the Jail Superintendent, Model Central Jail, Beur, Patna to facilitate such a process but all his requests have been declined and the petitioner has not been able to appear as on date.

5. Learned counsel appearing on behalf of the State has filed a counter affidavit stating that the petitioner failed to appear on the appointed date and, therefore, in view of his incarceration, he cannot approach this Court for such a direction to facilitate his presence before the Speaker of the Assembly to take oath of office. It has been submitted by learned counsel for the State that in similar situation, the appropriate thing for the petitioner to do, was to approach the Court below for a direction in the same manner in which he had filed his nomination papers. He submits that one Rit Lal Yadav who had also been behind the bars, had approached the Court below in his case and had obtained permission and was thereafter produced for administering the oath of office. As such, the petitioner having an alternative remedy could not approach this Court for a relief as prayed for in this application.

6. In order to ascertain the procedure which is to be followed, the Bihar Vidhan Sabha, through Secretary of the Assembly, was also impleaded as one of the parties Respondent. It is submitted by learned Senior Advocate Shri D.K. Sinha, appearing on behalf of the Assembly that the procedure to be followed are enshrined in Rules of Procedure and Conduct of Business of the Vidhan Sabha (Bihar Legislative Assembly) framed in accordance with the Constitutional provisions. Rule 28 of Rules States as under:-

"28. New members to make oath and take their seats:- 1. At the beginning of each meeting the Secretary shall call the name of any new member who is present and who desires to take his seat. Such member shall then take the oath or make the affirmation in the manner prescribed in the Constitution.

2. The members shall sit in such order as the Speaker may appoint.

7. A bare perusal of the Rules reveal that in fact new members are administered oath of office and they may take their seats at the beginning of each meeting and the Secretary shall call the name of any new member who is present and who desires to take his seat. It has been stated that in the said Rule that such a

Member shall take his oath and make in the manner prescribed in the Constitution of India. It is thus evident from the aforementioned Rules that at the beginning of each meeting, a Member can approach the Secretary and subscribe to the oath of office.

8. While delving into the constitutional provisions, the learned counsel appearing on behalf of the petitioner submitted that this Court in its extraordinary jurisdiction could well extend such a direction to the Court so that he may be able to subscribe to the oath of office and that he may not be faced with the situation in which he may lose his seat for his absence from the Assembly.

9. In this context, it would be relevant to refer to a similar situation which has been cited in (2009) 9 SCC 222 in the case of *Rajesh Ranjan v. State of Bihar* and another, in which a Member of Parliament had faced a similar situation. In the aforementioned case, it had been directed by the Apex Court that the petitioner of the said case be taken under proper security and handed over to the Police Station of the Parliament on a particular date for handing over to the Lok Sabha Secretariat so that he can be taken for taking oath. The extract of the aforementioned case is quoted herein below:-

"??We therefore, direct the State of Bihar and other authorities concerned to take the petitioner to Parliament Police Station on 23.02.2000 at 10.00 a.m. Officers taking the petitioner to Parliament Police Station shall hand him over to the appropriate staff of the Lok Sabha Secretariat so that they may take the petitioner to the Speaker of the Lok Sabha or the designated officer for the purpose of taking oath on that day. The petitioner shall also be permitted to attend the proceedings of Parliament on that day. Learned Solicitor General states that after the petitioner is given the oath and after he attends Parliament session on that day, the Secretariat of Parliament will hand him over back to the authorities who shall then take him back to the place of custody."

10. Accordingly, finding the petitioner in similar situation, this Court directs that the authorities of the Jail shall take appropriate measures and after getting the date fixed from the Vidhan Sabha Secretariat and take the petitioner in proper police escort and hand him over to the authorities of the Bihar Vidhan Sabha for subscribing to the oath of office. Such a direction is also being issued to the Senior Superintendent of Police, Patna to provide necessary Police escort to the petitioner so that he can be present on the appointed date before the Assembly for subscribing to the oath of office. Thereafter, it shall be the duty of the Secretariat of the Bihar Vidhan Sabha to hand him back over to those authorities who had brought him to the Bihar Vidhan Sabha so that he may be taken back and handed over to the jail authority. It is made clear that both the authorities shall maintain strict security.

11. It is also directed that Bihar Vidhan Sabha shall take immediate steps to fix an appropriate date so that the petitioner can be produced before Bihar Vidhan Sabha for taking his oath in accordance with law, at the earliest.

12. The said date should be communicated to the jail authorities at the earliest.
13. This writ application is disposed of accordingly.
14. Let a copy of this order be communicated to Mr. D.K. Sinha, learned Senior Counsel appearing on behalf of the Assembly.