

(2003) 08 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 8422 of 2003

Panchayat Samiti Sangharsh Morcha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 139

Citation : (2003) 4 PLJR 480

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. On the presentation of this petition learned Counsel appearing for the State Election Commission and learned Counsel appearing for the State Messrs. K.B. Nath and V.N. Sinha, G.P. 9, respectively brought to the attention of the court that in respect of the same Panchayat a writ petition was filed, in effect, with the same issue and this writ petition was rejected. This was CWJC. No. 8075 of 2003 : Lal Rai v. The State of Bihar and Ors. in which the Petitioner was runner up in an election. The election was to the post of Mukhiya.

2. In the present petition an organisation has been formulated known as Panchayat Samiti Sangharsh Morcha and now it brings an issue that should a Mukhiya be unsuited for causes that he is disqualified u/s 139 of the Bihar Panchayat Rajya Act, 1993, then the court should consider the aspect that the runner up in the election should be made the Mukhiya.

3. Firstly, in a matter in which the counsel is common it would have been appropriate to make a reference of the earlier writ petition. When this Court examines matters in its writ jurisdiction it does so on the faith that the aspects, which are within the special knowledge of the Petitioner or his counsel in the same cause will not be kept away from the court. If it is done then it erodes the faith which the court puts in either on the parties or the counsel. To violate this

principle for a litigant is unethical. For a lawyer it is unprofessional.

4. The second issue is on the aspect that in case a Mukhiya is ousted then the runner up may automatically hold the office. On this aspect the court is not about to spell out a formula. The concerned person who calls himself a runner up in the earlier petition is reagitating the same issue. This is not a matter which has arisen out of an election petition whether the person who maintains an election petition should he succeed, the person in office will lose his seat and the next candidate may be the winner.

5. The votes, which may have been cast in favour of a person who has been disqualified u/s 139, in the event of an election will need to be re-cast amongst the electorates of that Panchayat unless the nomination paper was rejected prior to election.

6. Dismissed.